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J. B. Bosanquet
Lincolns Inn.

Vet. F. II. B. 1802
~~VM3. E. Fr[illegible]~~
~~Vet. F. I. [illegible]~~
~~[illegible]~~

THE SPIRIT OF LAWS.

THE SPIRIT OF LAWS.

Tranſlated from the FRENCH of

M. DE SECONDAT,
BARON DE MONTESQUIEU.

By THOMAS NUGENT, LL.D.

VOL. I.

. . . . . *Prolem ſine matre creatam.*

THE FOURTH EDITION,
Carefully reviſed and improved with conſiderable Additions by the Author.

LONDON,
Printed for J. NOURSE, and P. VAILLANT, in the *Strand*.
MDCCLXVI.

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1960
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TO THE

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THE

EARL of SHELBURNE.

My LORD,

IT was a saying of one of the greatest critics of antiquity, that whosoever took particular delight in Cicero's writings, might conclude he had made a considerable proficiency in the art of eloquence. With equal propriety it may be affirmed of the work, which I have the honour of presenting to your lordship, that whoever finds a pleasure in perusing the Spirit of Laws, must be deemed to have greatly improved in the study of jurisprudence and politics. Your lordship has been a constant admirer of this celebrated work; and from thence

you have imbibed that noble and manly taſte, that dignity of ſentiment, and thoſe refined ideas of civil liberty, which have endeared you to the public, and for which you have been already diſtinguiſhed in the Britiſh Senate. This, indeed, has been my inducement for prefixing your name to a performance, which has hitherto claimed no patronage or protection of the great; but has ſupported itſelf by its intrinſic merit, and even commanded the applauſe of the literary world. It is not my intention, My Lord, in this addreſs, to follow the common track of dedicators, by writing a panegyric on your virtues, or launching into encomiums on your noble progenitors. Let other pens, when poſterity ſhall anxiouſly enquire into the hiſtory of your tranſactions, expatiate on thoſe accompliſhments, which add a new luſtre to your high birth; let them paint that dignity without pride, that magnificence without profuſion, that elegance of manners, that affability, and that public ſpirit,

which form the characteriſtic of the Earl of Shelburne; it will be ſufficient for me to view you, at this juncture, My Lord, as an admirer of Monteſquieu, and as an encourager of real merit. Affluence of fortune is no leſs adventitious than tranſitory; it indiſcriminately falls to the ſhare of the virtuous and the undeſerving; and is but too often proſtituted to the baſe purpoſes of debauchery and corruption. The extraordinary affluence, with which it has pleaſed providence to bleſs your Lordſhip, you nobly employ, not in the idle purſuits of faſhionable vice, but in promoting the polite arts, in bringing modeſt merit into light, and in acts of public utility. I could be more ample on this ſubject, My Lord; but your delicacy forbids me, and I would not be ſuſpected of adulation. This, however, I muſt affirm, that thoſe truly noble virtues, which have raiſed you to ſuch a degree of eminence at this early ſtage of life, give the public juſt reaſon to preſage, that you will render yourſelf

ſtill more conſpicuous in the ſervice of your country; and that after you have lived one of the greateſt ornaments of the preſent age, your name will be tranſmitted with honour to poſterity. *Tu Marcellus eris.* Such is the ſincere wiſh of

My Lord,

Your Lordſhip's

Moſt humble, and

Moſt obedient ſervant,

Gray's-Inn,
June 26, 1766.

Thomas Nugent.

THE TRANSLATOR's PREFACE.

THE author of the following work, Charles de Secondat, Baron de Monteſquieu, was deſcended of a noble family in Guienne, and born at the caſtle of la Brede, near Bourdeaux, on the 18th of January, 1689. * His father was a younger brother, who had ſerved ſome time in the army, from which he ſoon retired. Young Monteſquieu gave early proofs of his ſuperior talents, and his father was diligent to improve them. At the age of twenty, he was employed in preparing the materials of his Spirit of Laws, by judicious extracts from the immenſe volumes that compoſe the body of civil law. Juriſprudence, though leſs dry to him than to moſt who apply to it, becauſe he cultivated it as a philoſopher, was not ſufficient for his extenſive and active ge-

* This account of the life of baron de Monteſquieu is extracted chiefly from the elogiums on that author publiſhed by M. de Maupertuis, and M. d'Alembert.

nius. He entered, at the ſame time, into the depths of the moſt important and delicate ſubjects *; and treated them with that judgment, decency, and juſtice, by which all his writings are diſtinguiſhed.

His father's brother, preſident *à mortier* of the parliament of Bourdeaux, who was the eldeſt branch of the family, loſing his only ſon, left his fortune and his office to M. de Monteſquieu, who had been admitted a counſellor in the parliament of Bourdeaux, Feb. 24, 1714, and was received preſident *à mortier*, July 13, 1716. In 1722, during the king's minority, he was deputed by the parliament to make remonſtrances againſt a new oppreſſive tax upon wine. This commiſſion he diſcharged with ſo much ſpirit and addreſs, that the tax was aboliſhed, though it afterwards revived under another form. April 3, 1716, he was admitted a member of the infant academy of Bourdeaux, and diverted the ſociety from the ſtudy of the polite arts, which can ſeldom be cultivated to advantage but in the capital, to the more uſeful ſtudy of phyſic.

But the functions of magiſtracy proved a confinement to M. de Monteſquieu's genius. He was ſenſible that he could be more ſer-

* This was a tract in the form of letters, deſigned to ſhew that the idolatry of the Pagans did not deſerve eternal damnation: but he took care in time to ſuppreſs it.

viceable

viceable to his country and to mankind, by his writings than by his judicial deciſions. He therefore ſold his employment in 1726, a ſtep for which he would have been cenſured by many, if by reſigning a place in which he explained and enforced the obſervance of the laws, he had not rendered himſelf more capable of improving the great art of legiſlation.

In 1721, when he was thirty-two years of age, he publiſhed his firſt work, entitled, *Lettres Perſannes*, or Perſian Letters. In theſe he expoſes with great ſprightlineſs and energy, the cuſtom of the French, to treat the moſt trifling things with ſerioufneſs, and to turn the moſt important into ridicule; their converſation ſo noiſy and frivolous; their languor even in the center of pleaſure; their prejudices and their actions, in continual contradiction to their underſtanding; their ardent love of glory, joined to the moſt profound homage to the idol of court-favour; their courtiers ſo ſervile and yet ſo vain; their outward politeneſs to, and their inward contempt of, foreigners; the extravagance of their taſte, than which nothing can be more ridiculous, except the eagerneſs of all Europe to adopt it; their barbarous diſdain of the moſt reſpectable occupations of a citizen, namely, commerce, and the adminiſtration of juſtice; their literary diſputes, ſo warm, and yet ſo uſeleſs; in fine, their

rage of writing without thought, and judging without knowledge. To this lively portrait he oppoſes, in the apologue of the Troglodites, a repreſentation of England, which he calls a virtuous nation made wiſe by misfortunes.

Though this piece had the greateſt ſucceſs, it was not owned by the author. There were ſeveral free expreſſions in it, relating not to the eſſentials of chriſtianity, but to things that many people endeavour to confound with chriſtianity; ſuch as the ſpirit of perſecution with which ſo many pretended chriſtians have been animated; the temporal uſurpations made by the clergy; and the exceſſive multiplication of monaſteries, which leſſens the number of ſubjects in the ſtate, without increaſing the ſincere worſhippers of God. Theſe and ſome other points being miſrepreſented to the miniſtry, when our author ſtood candidate for a place in the French academy, vacant by the death of M. de Sacy, it was ſignified to the members, by cardinal Fleury, that the king would not approve of the election of the author of the *Lettres Perſannes*. M. de Monteſquieu ſaw the conſequence of this blow to his perſon, his family, and the tranquility of his life. He conſidered a perpetual excluſion from the academy, eſpecially from ſuch motives, as an act of injuſtice. He waited on the miniſter,

niſter, who told him that he muſt either relinquiſh his pretenſions, or diſown the book. Our learned preſident replied that, for private reaſons, he did not acknowledge himſelf to be the author of the *Lettres Perſannes*; but that there was nothing in them that he was aſhamed of; and that he ought to have been judged, not upon the repreſentation of an informer, but upon a candid peruſal of this work *. The miniſter did what he ought to have done at firſt: he read the book, liked the author, and learned where to place his confidence. France retained a ſubject, of whom ſhe had like to have been deprived by ſuperſtition and calumny: for M. de Monteſquieu declared, that after ſuch an affront, he would ſeek among ſtrangers, who held out their arms to receive him, that ſecurity and quiet, and perhaps thoſe recompenſes which he might have hoped for in his own country. He was received into the academy, Jan. 24, 1728.

The new academician was the more deſerving of that honour, as he had lately quit-

* Voltaire ſays (*Siecle de Louis* XIV. edit. 1756) that Monteſquieu cauſed a new edition of his book to be printed off in a few days; in which he either omitted, or ſoftened, whatever could give offence to cardinal Fleury, and carried the book to him himſelf. The cardinal, who ſcarce ever read, curſorily looked into ſome parts of it, and the air of confidence Monteſquieu aſſumed, joined to the ſollicitations of ſome perſons of high rank, made him drop his oppoſition.

ted

ted his employment to follow the bent of his genius, and had now devoted his time intirely to letters. For his farther improvement in knowledge, he ſet out a few months after on his travels, in company with his intimate friend lord Waldegrave, ambaſſador from England to the court of Vienna. There he often ſaw the celebrated prince Eugene. This hero, after humbling the Gallic and Ottoman pride, lived, in time of peace, without pomp, a lover and encourager of letters.

M. de Monteſquieu went next to Hungary, a fertile kingdom, inhabited by a brave and generous people. As this country is but little known, he treats of it at large in the account of his travels, which is not yet publiſhed. He proceeded next to Italy. At Venice he ſaw the famous Law, who had nothing left of his former proſperity, but projects that were happily deſtined to die with him, and a diamond, which he often pledged to raiſe money to play at games of chance. Another perſon not leſs famous, whom our author ſaw frequently at Venice, was count Bonneval. This man, ſo well known by his adventures, which were not yet brought to their final period, pleaſed to have a judge that deſerved ſo well to hear him, took great ſatisfaction in giving M. de Monteſquieu a detail of his very extraordinary life, of the military actions in which he had been concerned,

concerned, and the characters of the generals and miniſters with whom he had been acquainted. Monteſquieu often recalled to mind thoſe converſations, and related many paſſages of them to his friends.

From Venice he went to Rome. In this famous capital he viewed the wonders of antiquity with a philoſophic eye, and ſhewed his taſte in his remarks on the celebrated performances of Raphael, Titian, and Michael Angelo. He had not made the polite arts his particular ſtudy; but the expreſſion ſo conſpicuous in maſter-pieces of that kind never fails to ſtrike a man of genius. Accuſtomed to obſerve nature, he knows her when he ſees her imitated; as a good likeneſs ſtrikes all who are well acquainted with the original. But more curious to converſe with great men, than to admire the wonders of art, he entered into an intimate connection with cardinal Polignac, ambaſſador from France, and cardinal Corſini, afterwards pope Clement XII.

After travelling through Italy, M. de Monteſquieu went to Switzerland, and carefully examined the ſeveral countries watered by the Rhine. Following the courſe of this river, he came to Holland, where he ſtaid ſome time, and from thence croſſed over to England. Here he had often the honour to wait on that generous protectreſs of the literati, queen

queen Caroline, who cultivated philoſophy on the throne, and had a juſt reliſh for M. de Monteſquieu's converſation. He was equally well received by the nation; who in this inſtance did not want to have the example ſet them by the court. At London he formed connections with men of learning, and with ſtateſmen; by which means he acquired a perfect knowledge of the Engliſh government. This kingdom, which glories ſo much in its laws, was to our traveller what the iſle of Crete had been formerly to Lycurgus, a ſchool where he improved in knowledge, without approving the whole.

On his return to France, he retired for two years to his ſeat at la Brede, and put the laſt hand to his work, of the Cauſes of the Riſe and Fall of Rome, which appeared in 1733. It might juſtly have been intitled, *The Roman Hiſtory, for the uſe of ſtateſmen and philoſophers.*

How much reputation ſoever he might have gained by this and his former works, he had as yet only cleared the way for a much greater undertaking, that which ought to immortalize his name, and render his memory reſpectable to future ages. He had long before this time formed the deſign of it: he had meditated on the execution of it for twenty years, or rather his whole life was one continued

tinued meditation. He firſt made himſelf, as it were, a ſtranger in his own country, that he might know it better. He next viſited Europe, and with the deepeſt attention inquired into the characteriſtics of the ſeveral people by whom it is inhabited. In fine, he had examined and judged nations and eminent men that no longer exiſt, but in the annals of the world. Thus he gradually roſe to the higheſt title a wiſe man can attain, that of legiſlator of nations.

If he was animated by the importance of his ſubject, he was diſcouraged by its extent: he dropped and reſumed it ſeveral times, till at length, excited by his friends, he muſtered all his ſtrength, and publiſhed his *Spirit of Laws*.

Among the authors by whom he was aſſiſted, and from whom he borrowed ſome of his ſentiments, the principal are the two of deepeſt meditation, Tacitus and Plutarch: but, indeed, he neglected or ſlighted none that could be of uſe to his deſign. *The Spirit of Laws* diſcovers immenſe reading, and the judicious uſe which the author made of the prodigious maſs of materials will appear ſtill more ſurpriſing, when it is known that he was almoſt wholly deprived of ſight, and obliged to make uſe of other people's eyes.

Though

Though M. de Monteſquieu did not long ſurvive the publication of his *Eſprit des Loix*, he had the pleaſure to ſee the beginning of its effects upon the French nation; the natural love of the French for their country, turned to its proper object; a taſte for commerce, agriculture, and the uſeful arts, beginning to ſpread throughout the kingdom; and that general knowledge of the principles of government, which renders the people more attached to what they ought to love.

This excellent performance may, with the ſtricteſt juſtice, be ſaid to have done honour to human nature, as well as to the great abilities of the author. The wiſeſt and moſt learned men, and thoſe moſt diſtinguiſhed by birth and the elevation of their ſtation, have, in every country in Europe, conſidered it as a maſter-piece in its kind. And may we be permitted to add, that a ſovereign prince *, as juſtly celebrated for his probity and good ſenſe, as for his political and military ſkill, has declared that from M. de Monteſquieu he has learnt the art of government. Throughout the whole work we ſee the character of the preſident's mind diſplayed, in the love of mankind, a ſtrict attention to their happineſs, and a juſt ſenſe of liberty. The ſingle picture he has drawn of Aſiatic deſpotiſm, that

* The preſent king of Sardinia.

frightful

frightful government which exhibits to our view only a maſter and his ſlaves, is perhaps the beſt remedy or preſervative againſt ſuch a calamity. The like wiſdom appears in his maxims to prevent democracy from falling into that licentiouſneſs, which ſo frequently attends too great an equality of citizens.

Neverthelefs, a multitude of ſcurrilous writings have appeared in France, endeavouring to blaſt this great man's laurels. The anonymous author of a periodical work thought to ruin M. de Monteſquieu, but was the occaſion of new luſtre being caſt on his name, by provoking him to write a *Defence of his Spirit of Laws.* This work may ſerve as a model, on account of the moderation, truth, and humour, that appear throughout the whole of it. The learned preſident could eaſily have rendered his adverſary odious; but he choſe rather to make him ridiculous. What adds to the value of this piece, is, that the author, without thinking of it, has in it drawn a true picture of himſelf: thoſe who knew him, imagine they hear him ſpeak; and poſterity, when they read his *Defence*, will ſee that his converſation was not inferior to his writings.

While the inſects thus buzzed about, and moleſted him in his own country, M. Daſſier, famous for his medals of illuſtrious men, went

went from London to Paris 1752, to ſtrike a medal of M. de Monteſquieu. M. de la Tour alſo, an eminent painter, was very deſirous to draw a portrait of the author of the *Spirit of Laws:* but M. de Monteſquieu conſtantly refuſed, in a polite manner, his preſſing ſolicitations. M. Daſſier met with the ſame difficulties at firſt: "Don't you think" (ſaid he one day to Monteſquieu) "that there "is as much pride in refuſing my requeſt as "there would appear in granting it?" Diſarmed by this pleaſantry, he ſuffered M. Daſſier to do as he thought proper.

He was at laſt in peaceable poſſeſſion of the glory he ſo juſtly acquired, when he was taken ill in the beginning of February. His health, naturally delicate, had long before begun to break by the ſlow and almoſt imperceptible effects of his cloſe ſtudy, the chagrin given him on account of his work, and the multiplicity of company that crowded to him at Paris. His end was worthy of his life. Oppreſſed by grievous pains, and at a diſtance from a family he loved, he breathed his laſt with the tranquility of a good man, conſcious of having devoted his talents to the ſervice of virtue and mankind. He died on the 10th of February 1755, univerſally and ſincerely regretted. "His virtues" (ſays lord Cheſterfield) "did honour to human nature, his "writ-

" writings, juſtice. A friend to mankind, " he aſſerted their undoubted and unalienable " rights and freedoms, even in his own coun- " try, whoſe prejudice in matters of religion " and government he had long lamented, " and endeavoured (not without ſome ſucceſs) " to remove. He well knew, and juſtly " admired, the happy conſtitution of this " country, where fixed and known laws re- " ſtrain monarchy from tyranny, and liberty " from licentiouſneſs. His works will illuſ- " trate his name, and ſurvive him as long " as right reaſon, moral obligation, and the " true ſpirit of laws ſhall be underſtood, re- " ſpected, and maintained."

With regard to his private life: In company he was always pleaſant and gay; his converſation, from his knowledge of the world, was ſprightly, agreeable, and inſtructive: it was abrupt like his ſtyle; full of piquant ſallies, without bitterneſs or ſatire. No body told a ſtory with more life, readineſs and grace, and leſs formality: he knew that the concluſion of a pleaſant ſtory is the chief point; therefore he haſtened to it, and produced the deſired effect, without having promiſed it. The pleaſure found in his company was not merely the effect of his temper and genius, but of a kind of regimen alſo, which he obſerved in his ſtudies: though capable

of deep and long continued meditation, he never exhauſted his ſtrength, but always ſuſpended labour before he felt any ſenſation of fatigue.

Nothing does more honour to his memory than his œconomy, which was thought too great in an age of avarice and diſſipation, when its motives were not perceived, nor if perceived, could have been felt. Beneficent, and conſequently juſt, M. de Monteſquieu would take from his family nothing of what he gave to relieve the diſtreſſed, nor of the large expences occaſioned by his long travels, the diſorder in his eyes, and the printing of his works. He left to his children the inheritance of his father without diminution, and without increaſe.

He married in 1715, Jane de Lartigue, daughter of Pierre de Lartigue, lieutenant-colonel of the regiment of Maulevrier; by whom he had two daughters, and a ſon, who by his character, his manners, and his writings, hath ſhewn himſelf worthy of ſuch a father.

We omitted to mention in its place ſome of the author's leſs conſiderable works, which ſerved him for relaxation. The moſt remarkable of theſe is the *Temple de Gnide*, which appeared ſoon after the *Lettres Perſannes*. In this piece he paints the delicacy and ſimplicity

of paſtoral love, as it appears in a mind uncorrupted by the commerce of the world. He concludes in the preface, in which he repreſents the work as a tranſlation from the Greek, with theſe words: "If grave people ſhould "deſire of me a leſs frivolous performance, I "can ſatisfy them: I have been employed "for theſe thirty years on twelve pages, which "are to contain all that we know of meta-"phyſics, politics, and morals; and all that "very grave authors have forgotten in the vo-"lumes they have written on thoſe ſciences."

A Letter from M. de MONTESQUIEU to the Tranſlator.

JE ne puis m'empecher, Monſieur, de vous faire mes remerciments. Je vous les avois deja faits, parceque vous m'aviez traduit ; je vous les fais à preſent, parceque vous m'aviez ſi bien traduit. Votre traduction n'a de defauts que ceux de l'original, et ces defauts ſont a moy ; et je dois vous être bien obligé de ce que vous empechez ſi bien de les voir. Il ſemble que vous ayez voulu traduire auſſi mon ſtile, et vous y avez mis cette reſemblance, qualem decet eſſe ſororum. *Quand vous verrez Monſieur Domville, je vous prie de vouloir bien lui faire mes compliments. J'ai l'honneur d'être, Monſieur, avec une parfaite reconnoiſſance,*

Monſieur,

Votre tres humble

et tres obeiſſant ſerviteur,

MONTESQUIEU.

A Paris, ce
18 Octobre
1750.

Tranſla-

Tranſlation of the foregoing Letter.

SIR,

I cannot help returning you thanks; indeed I had already thanked you for rendering my work into Engliſh; but now I thank you once more for having done it ſo well. Your tranſlation has no blemiſhes but thoſe of the original, which are to be charged to my account; and I am much obliged to you for your ability in concealing them from the public eye. It would ſeem that you intended alſo to tranſlate my ſtile; for there is exactly that reſemblance, *qualem decet eſſe ſororum.* When you ſee Mr. Domville, I beg you will pay my compliments to him. I have the honour of being, with the moſt grateful acknowledgement,

SIR,

Your moſt humble and

obedient Servant,

MONTESQUIEU.

Paris, the 18th of Octob. 1750.

The AUTHOR's Advertiſement.

1°. *FOR the better underſtanding of the firſt four books of this work, it is to be obſerved that what I diſtinguiſh by the name of* virtue, *in a republic, is the love of one's country, that is, the love of equality. It is not a moral, nor a chriſtian, but a political* virtue; *and it is the ſpring which ſets the republican government in motion, as honour is the ſpring which gives motion to monarchy. Hence it is, that I have diſtinguiſhed the love of one's country, and of equality, by the appellation of political virtue. My ideas are new, and therefore I have been obliged to find out new words, or to give new acceptations to old terms, in order to convey my meaning. They who are unacquainted with this particular, have made me ſay moſt ſtrange abſurdities, ſuch as would be ſhocking in any part of the world, becauſe in all countries and governments morality is requiſite.*

2°. *The reader is alſo to take notice, that there is a vaſt difference between ſaying, that a certain quality, modification of the mind, or virtue, is not the ſpring by which government is actuated, and affirming that it is not to be found in that government. Were I to ſay, ſuch a*

wheel,

wheel, or ſuch a pinion, is not the ſpring which ſets the watch a going, can you infer from thence that they are not to be found in the watch? So far is it from being true, that the moral and chriſtian virtues are excluded from monarchy, that even political virtue is not excluded. In a word, honour is found in a republic, though its ſpring be political virtue; and political virtue is found in a monarchical government, though it be actuated by honour.

To conclude, the honeſt man of whom we treat in the third book, chap. v. *is not the chriſtian, but the political honeſt man, who is poſſeſſed of the political virtue there mentioned. He is the man who loves the laws of his country, and who is actuated by the love of thoſe laws. I have ſet theſe matters in a clearer light in the preſent edition, by giving a more preciſe meaning to my expreſſion: and in moſt places, where I have made uſe of the word* virtue, *I have taken care to add the term* political.

THE AUTHOR's PREFACE.

IF amidſt the infinite number of ſubjects contained in this book, there is any thing, which contrary to my expectation, may poſſibly offend, I can at leaſt aſſure the public, that it was not inſerted with an ill intention: for I am not naturally of a captious temper. Plato thanked the Gods, that he was born in the ſame age with Socrates: and for my part I give thanks to the Supreme, that I was born a ſubject of that government under which I live; and that it is his pleaſure I ſhould obey thoſe whom he has made me love.

I beg one favour of my readers, which I fear will not be granted me; this is, that they will not judge by a few hours reading, of the labour of twenty years; that they will approve or condemn the book entire, and not a few

a few particular phraſes. If they would ſearch into the deſign of the author, they can do it no other way ſo completely, as by ſearching into the deſign of the work.

I have firſt of all conſidered mankind; and the reſult of my thoughts has been, that amidſt ſuch an infinite diverſity of laws and manners, they were not ſolely conducted by the caprice of fancy.

I have laid down the firſt principles, and have found that the particular caſes follow naturally from them; that the hiſtories of all nations are only conſequences of them; and that every particular law is connected with another law, or depends on ſome other of a more general extent.

When I have been obliged to look back into antiquity, I have endeavoured to aſſume the ſpirit of the ancients, leſt I ſhould conſider thoſe things as alike, which are really different; and leſt I ſhould miſs the difference of thoſe which appear to be alike.

I have not drawn my principles from my prejudices, but from the nature of things.

Here a great many truths will not appear, till we have ſeen the chain which connects them with others. The more we enter into particulars, the more we ſhall perceive the certainty of the principles on which they are founded. I have not even given all theſe particulars,

ticulars, for who could mention them all without a moſt inſupportable fatigue?

The reader will not here meet with any of thoſe bold flights, which ſeem to characteriſe the works of the preſent age. When things are examined with never ſo ſmall a degree of extent, the ſallies of imagination muſt vaniſh; theſe generally ariſe from the mind's collecting all its powers to view only one ſide of the ſubject, while it leaves the other unobſerved.

I write not to cenſure any thing eſtabliſhed in any country whatſoever. Every nation will here find the reaſons on which its maxims are founded; and this will be the natural inference, that to propoſe alterations, belongs only to thoſe who are ſo happy as to be born with a genius capable of penetrating into the entire conſtitution of a ſtate.

It is not a matter of indifference, that the minds of the people be enlightened. The prejudices of magiſtrates have ariſen from national prejudice. In a time of ignorance they have committed even the greateſt evils without the leaſt ſcruple; but in an enlightened age they even tremble, while conferring the greateſt bleſſings. They perceive the ancient abuſes; they ſee how they muſt be reformed; but they are ſenſible alſo of the abuſes of a reformation. They let the evil continue, if they

they fear a worſe; they are content with a leſſer good, if they doubt of a greater. They examine into the parts, to judge of them in connection; and they examine all the cauſes to diſcover their different effects.

Could I but ſucceed ſo as to afford new reaſons to every man to love his prince, his country, his laws; new reaſons to render him more ſenſible in every nation and government of the bleſſings he enjoys, I ſhould think myſelf the moſt happy of mortals.

Could I but ſucceed ſo as to perſuade thoſe who command, to increaſe their knowledge in what they ought to preſcribe; and thoſe who obey, to find a new pleaſure reſulting from obedience; I ſhould think myſelf the moſt happy of mortals.

The moſt happy of mortals ſhould I think myſelf, could I contribute to make mankind recover from their prejudices. By prejudices, I here mean, not that which renders men ignorant of ſome particular things, but whatever renders them ignorant of themſelves.

It is in endeavouring to inſtruct mankind, that we are beſt able to practiſe that general virtue, which comprehends the love of all. Man, that flexible being, conforming in ſociety to the thoughts and impreſſions of others, is equally capable of knowing his own nature, whenever it is laid open to his view; and of loſing

loſing the very ſenſe of it, when this idea is baniſhed from his mind.

Often have I begun, and as often have I laid aſide this undertaking. I have a thouſand times given the leaves I have written, to the * winds: I every day felt my paternal hands fall †. I have followed my object without any fixed plan: I have known neither rules nor exceptions; I have found the truth, only to loſe it again. But when I had once diſcovered my firſt principles, every thing I ſought for appeared; and in the courſe of twenty years, I have ſeen my work begun, growing up, advancing to maturity, and finiſhed.

If this work meets with ſucceſs, I ſhall owe it chiefly to the grandeur and majeſty of the ſubject. However, I do not think that I have been totally deficient in point of genius. When I have ſeen what ſo many great men both in France, England, and Germany, have ſaid before me, I have been loſt in admiration; but I have not loſt my courage: I have ſaid with Corregio, *And I alſo am a* ‡ *painter.*

* *Ludibria ventis.*

† *Ter patriæ cecidere manus*——

‡ *Ed io anche ſon pittore.*

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THE

THE SPIRIT OF LAWS.

BOOK I.

Of Laws in General.

Wm. Barnard

CHAP. I.

Of the relation of Laws to different Beings.

LAWS, in their moſt general ſignification, are the neceſſary relations ariſing from the nature of things. In this ſenſe all beings have their laws, the Deity * his laws, the material world its laws, the intelligences ſuperior to man their laws, the beaſts their laws, man his laws.

They who aſſert that *a blind fatality produced the various effects we behold in this world*, talk very abſurdly; for can any thing be more un-

* *Law*, ſays Plutarch, *is the king of mortal and immortal beings.* See his treatiſe, entitled, *A diſcourſe to an unlearned prince.*

Book I. Chap. 1.

reaſonable than to pretend that a blind fatality could be productive of intelligent Beings?

There is then a primitive reaſon; and laws are the relations ſubſiſting between it and different beings, and the relations of theſe to one another.

God is related to the univerſe as creator and preſerver; the laws by which he created all things, are thoſe by which he preſerves them. He acts according to theſe rules, becauſe he knows them; he knows them, becauſe he made them; and he made them, becauſe they are relative to his wiſdom and power.

Since we obſerve that the world, though formed by the motion of matter, and void of underſtanding, ſubſiſts through ſo long a ſucceſſion of ages, its motions muſt certainly be directed by invariable laws: and could we imagine another world, it muſt alſo have conſtant rules, or it would inevitably periſh.

Thus the creation, which ſeems an arbitrary act, ſuppoſeth laws as invariable as thoſe of the fatality of the Atheiſts. It would be abſurd to ſay, that the Creator might govern the world without thoſe rules, ſince without them it could not ſubſiſt.

Theſe rules are a fixt and invariable relation. In bodies moved, the motion is received, increaſed, diminiſhed, loſt, according to the relations of the quantity of matter and velocity; each diverſity is *uniformity*, each change is *conſtancy*.

Particular intelligent beings may have laws of their own making, but they have ſome likewiſe which they never made. Before there were intelligent beings, they were poſſible; they had therefore poſſible relations, and conſequently poſſible laws.

Before

Before laws were made, there were relations of poſſible juſtice. To ſay that there is nothing juſt or unjuſt but what is commanded or forbidden by poſitive laws, is the ſame as ſaying, that before the deſcribing of a circle all the radii were not equal.

We muſt therefore acknowledge relations of juſtice antecedent to the poſitive law by which they are eſtabliſhed: as for inſtance, that if human ſocieties exiſted, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to ſhew their gratitude; if one intelligent being had created another intelligent being, the latter ought to continue in its original ſtate of dependance; if one intelligent being injures another, it deſerves a retaliation; and ſo on.

But the intelligent world is far from being ſo well governed as the phyſical. For though the former has alſo its laws, which of their own nature are invariable, it does not conform to them ſo exactly as the phyſical world. This is becauſe, on the one hand, particular intelligent beings are of a finite nature, and conſequently liable to error; and on the other, their nature requires them to be free agents. Hence they do not ſteadily conform to their primitive laws; and even thoſe of their own inſtituting they frequently infringe.

Whether brutes be governed by the general laws of motion, or by a particular movement, we cannot determine. Be that as it may, they have not a more intimate relation to God than the reſt of the material world; and ſenſation is of no other uſe to them, than in the relation they have either to other particular beings, or to themſelves.

By the allurement of pleaſure they preſerve the individual, and by the ſame allurement they preſerve their ſpecies. They have natural laws, becauſe they are united by ſenſation; poſitive laws they have none, becauſe they are not connected by knowledge. And yet they do not invariably conform to their natural laws; theſe are better obſerved by vegetables, that have neither underſtanding nor ſenſe.

Brutes are deprived of the high advantages which we have; but they have ſome which we have not. They have not our hopes, but they are without our fears; they are ſubject like us to death, but without knowing it; even moſt of them are more attentive than we to ſelf-preſervation, and do not make ſo bad a uſe of their paſſions.

Man, as a phyſical being, is like other bodies, governed by invariable laws. As an intelligent being, he inceſſantly tranſgreſſes the laws eſtabliſhed by God, and changes thoſe of his own inſtituting. He is left to his private direction, though a limited being, and ſubject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loſeth; and as a ſenſible creature, he is hurried away by a thouſand impetuous paſſions. Such a being might every inſtant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget himſelf; philoſophy has provided againſt this by the laws of morality. Formed to live in ſociety, he might forget his fellow creatures; legiſlators have therefore by political and civil laws confined him to his duty.

CHAP.

CHAP. II.

Of the Laws of Nature.

ANtecedent to the above-mentioned laws are thoſe of nature, ſo called, becauſe they derive their force entirely from our frame and exiſtence. In order to have a perfect knowledge of theſe laws, we muſt conſider man before the eſtabliſhment of ſociety: the laws received in ſuch a ſtate would be thoſe of nature.

The law which impreſſing on our minds the idea of a Creator inclines us towards him, is the firſt in importance, though not in order, of natural laws. Man in a ſtate of nature would have the faculty of knowing, before he had acquired any knowledge. Plain it is that his firſt ideas would not be of a ſpeculative nature; he would think of the preſervation of his being, before he would inveſtigate its original. Such a man would feel nothing in himſelf at firſt but impotency and weakneſs; his fears and apprehenſions would be exceſſive; as appears from inſtances (were there any neceſſity of proving it) of ſavages found in foreſts*, trembling at the motion of a leaf, and flying from every ſhadow.

In this ſtate every man, inſtead of being ſenſible of his equality, would fancy himſelf inferior. There would therefore be no danger of their attacking one another; peace would be the firſt law of nature.

* *Witneſs the ſavage found in the foreſts of Hanover, who was carried over to England under the reign of George I.*

The natural impulſe or deſire which Hobbes attributes to mankind of ſubduing one another, is far from being well founded. The idea of empire and dominion is ſo complex, and depends on ſo many other notions, that it could never be the firſt which occurred to the human underſtanding.

Hobbes enquires, *For what reaſon men go armed, and have locks and keys to faſten their doors, if they be not naturally in a ſtate of war?* But is it not obvious that he attributes to mankind before the eſtabliſhment of ſociety, what can happen but in conſequence of this eſtabliſhment, which furniſhes them with motives for hoſtile attacks and ſelf-defence?

Next to a ſenſe of his weakneſs man would ſoon find that of his wants. Hence another law of nature would prompt him to ſeek for nouriſhment.

Fear, I have obſerved, would induce men to ſhun one another; but the marks of this fear being reciprocal, would ſoon engage them to aſſociate. Beſides, this aſſociation would quickly follow from the very pleaſure one animal feels at the approach of another of the ſame ſpecies. Again, the attraction ariſing from the difference of ſexes would enhance this pleaſure, and the natural inclination they have for each other, would form a third law.

Beſide the ſenſe or inſtinct which man poſſeſſes in common with brutes, he has the advantage of acquired knowledge; and thence ariſes a ſecond tye, which brutes have not. Mankind have therefore a new motive of uniting; and a fourth law of nature reſults from the deſire of living in ſociety.

CHAP.

CHAP. III.

Of poſitive Laws.

AS ſoon as mankind enter into a ſtate of ſociety, they loſe the ſenſe of their weakneſs; equality ceaſes, and then commences the ſtate of war.

Each particular ſociety begins to feel its ſtrength, whence ariſes a ſtate of war betwixt different nations. The individuals likewiſe of each ſociety become ſenſible of their force; hence the principal advantages of this ſociety they endeavour to convert to their own emolument, which conſtitutes a ſtate of war betwixt individuals.

Theſe two different kinds of ſtates give riſe to human laws. Conſidered as inhabitants of ſo great a planet, which neceſſarily contains a variety of nations, they have laws relative to their mutual intercourſe, which is what we call the *law of nations*. As members of a ſociety that muſt be properly ſupported, they have laws relative to the governors and the governed; and this we diſtinguiſh by the name of *politic law*. They have alſo another ſort of laws, as they ſtand in relation to each other; by which is underſtood the *civil law*.

The law of nations is naturally founded on this principle, that different nations ought in time of peace to do one another all the good they can, and in time of war as little injury as poſſible, without prejudicing their real intereſts.

The object of war is victory; that of victory is conqueſt; and that of conqueſt preſervation. From this and the preceding principle all thoſe rules are derived which conſtitute the *law of nations*.

Book I. Chap. 3.

All countries have a law of nations, not excepting the Iroquois themſelves, though they devour their priſoners: for they ſend and receive ambaſſadors, and underſtand the rights of war and peace. The miſchief is, that their law of nations is not founded on true principles.

Beſides the law of nations relating to all ſocieties, there is a polity or civil conſtitution for each particularly conſidered. No ſociety can ſubſiſt without a form of government. *The united ſtrength of individuals*, as Gravina well obſerves, *conſtitutes what we call the body politic.*

The general ſtrength may be in the hands of a ſingle perſon, or of many. Some think that nature having eſtabliſhed paternal authority, the moſt natural government was that of a ſingle perſon. But the example of paternal authority proves nothing. For if the power of a father be relative to a ſingle government, that of brothers after the death of a father, and that of couſin-germans after the deceaſe of brothers, refer to a government of many. The political power neceſſarily comprehends the union of ſeveral families.

Better is it to ſay, that the government moſt conformable to nature, is that which beſt agrees with the humour and diſpoſition of the people, in whoſe favour it is eſtabliſhed.

The ſtrength of individuals cannot be united without a conjunction of all their wills. *The conjunction of thoſe wills*, as Gravina again very juſtly obſerves, *is what we call the* CIVIL STATE.

Law in general is human reaſon, inaſmuch as it governs all the inhabitants of the earth; the political

political and civil laws of each nation ought to be only the particular caſes in which human reaſon is applied.

They ſhould be adapted in ſuch a manner to the people for whom they are framed, that it is a great chance if thoſe of one nation ſuit another.

They ſhould be relative to the nature and principle of each government; whether they form it, as may be ſaid of politic laws; or whether they ſupport it, as in the caſe of civil inſtitutions.

They ſhould be relative to the climate of each country, to the quality of its ſoil, to its ſituation and extent, to the principal occupation of the natives, whether huſbandmen, huntſmen, or ſhepherds: they ſhould have a relation to the degree of liberty which the conſtitution will bear; to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and cuſtoms. In fine, they have relations to each other, as alſo to their origin, to the intent of the legiſlator, and to the order of things on which they are eſtabliſhed; in all which different lights they ought to be conſidered.

This is what I have undertaken to perform in the following work. Theſe relations I ſhall examine, ſince all theſe together conſtitute what I call the *Spirit of laws*.

I have not ſeparated the political from the civil inſtitutions: for as I do not pretend to treat of laws, but of their ſpirit; and as this ſpirit conſiſts in the various relations which the laws may have to different objects, it is not ſo much my

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my buſineſs to follow the natural order of laws, as that of theſe relations and objects.

I ſhall firſt examine the relations which laws have to the nature and principle of each government; and as this principle has a ſtrong influence on laws, I ſhall make it my ſtudy to underſtand it thoroughly; and if I can but once eſtabliſh it, the laws will ſoon appear to flow from thence as from their ſource. I ſhall proceed afterwards to other more particular relations.

BOOK II.

Of Laws directly derived from the Nature of Government.

CHAP. I.

Of the Nature of the three different Governments.

THERE are three ſpecies of government; *republican*, *monarchical*, and *deſpotic*. In order to diſcover their nature, it is ſufficient to recollect the common notion, which ſuppoſes three definitions, or rather three facts: that a *republican government is that in which the body, or only a part of the people, is poſſeſſed of the ſupreme power: monarchy, that in which a ſingle perſon governs by fixt and eſtabliſhed laws: a deſpotic government, that in which a ſingle perſon directs every thing by his own will and caprice.*

This is what I call the nature of each government; we muſt now inquire into thoſe laws which directly conform to this nature, and conſequently are the fundamental inſtitutions.

CHAP. II.

Of the republican Government, and the Laws relative to Democracy.

WHEN the body of the people is poſſeſſed of the ſupreme power, this is called a *democracy*. When the ſupreme power is lodged

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in the hands of a part of the people, it is then an *ariſtocracy*.

In a democracy the people are in ſome reſpects the ſovereign, and in others the ſubject.

There can be no exerciſe of ſovereignty but by their ſuffrages, which are their own will; now the ſovereign's will is the ſovereign himſelf. The laws therefore which eſtabliſh the right of ſuffrage, are fundamental to this government. And indeed it is as important to regulate in a republic, in what manner, by whom, to whom, and concerning what, ſuffrages are to be given, as it is in a monarchy to know who is the prince and after what manner he ought to govern.

(a) Declam. 17. & 28.

Libanius (a) ſays, that at *Athens a ſtranger, who intermeddled in the aſſemblies of the people, was puniſhed with death*. This is becauſe ſuch a man uſurped the rights of ſovereignty.

It is an eſſential point to fix the number of citizens who are to form the public aſſemblies; otherwiſe it would be uncertain whether the whole, or only a part of the people, had given their votes. At Sparta the number was fixt to ten thouſand. But Rome, deſigned by providence to riſe from the weakeſt beginnings to the higheſt pitch of grandeur; Rome, doomed to experience all the viciſſitudes of fortune; Rome, who had ſometimes all her inhabitants without her walls, and ſometimes all Italy and a conſiderable part of the world within them: Rome, I ſay, never fixed the number (b); and this was one of the principal cauſes of her ruin.

(b) See the Conſiderations on the cauſes of the grandeur and decline of the Romans.

The people, in whom the ſupreme power reſides, ought to have the management of every thing within their reach; what exceeds their abilities, muſt be conducted by their miniſters. But

But they cannot properly be ſaid to have their miniſters, without the power of nominating them: it is therefore a fundamental maxim in this government, that the people ſhould chuſe their miniſters, that is, their magiſtrates.

They have occaſion, as well as monarchs, and even more ſo, to be directed by a council or ſenate. But to have a proper confidence in theſe, they ſhould have the chuſing of the members; whether the election be made by themſelves, as at Athens; or by ſome magiſtrate deputed for that purpoſe, as on certain occaſions was cuſtomary at Rome.

The people are extremely well qualified for chuſing thoſe, whom they are to intruſt with part of their authority. They have only to be determined by things to which they cannot be ſtrangers, and by facts that are obvious to ſenſe. They can tell when a perſon has fought many battles, and been crowned with ſucceſs; they are therefore very capable of electing a general. They can tell when a judge is aſſiduous in his office, gives general ſatisfaction, and has never been charged with bribery: this is ſufficient for chuſing a prætor. They are ſtruck with the magnificence or riches of a fellow citizen; no more is requiſite for electing an edile. Theſe are facts of which they can have better information in a public forum, than a monarch in his palace. But are they capable of conducting an intricate affair, of ſeizing and improving the opportunity and critical moment of action? No; this ſurpaſſes their abilities.

Should we doubt of the people's natural capacity, in reſpect to the diſcernment of merit, we need only caſt

Book II. Chap. 2.

caſt an eye on the ſeries of ſurprizing elections made by the Athenians and Romans; which no one ſurely will attribute to hazard.

We know, that though the people of Rome aſſumed to themſelves the right of raiſing plebeians to public offices, yet they never would exert this power; and though at Athens the magiſtrates were allowed, by the law of Ariſtides, to be elected from all the different claſſes of inhabitants, there never was a caſe, ſays Xenophon (d), that the common people petitioned for employments which could endanger either their ſecurity or their glory.

(d) Page 691, and 692. Edit. Wechel. Ann. 1576.

As moſt citizens have ſufficient abilities to chuſe, though unqualified to be choſen; ſo the people, though capable of calling others to an account for their adminiſtration, are incapable of conducting the adminiſtration themſelves.

The public buſineſs muſt be carried on, with a certain motion, neither too quick nor too ſlow. But the motion of the people is always either too remiſs or too violent. Sometimes with a hundred thouſand arms they overturn all before them; and ſometimes with a hundred thouſand feet they creep like inſects.

In a popular ſtate the inhabitants are divided into certain claſſes. It is in the manner of making this diviſion that great legiſlators have ſignalized themſelves; and it is on this the duration and proſperity of democracy have ever depended.

Servius Tullius followed the ſpirit of ariſtocracy in the diſtribution of his claſſes. We find in Livy (e) and in Dionyſius Halicarnaſſeus (f), in what manner he lodged the right of ſuffrage in the hands of the principal citizens. He had divided the

(e) lib. 1.
(f) lib. 4. Art. 15, & ſeq.

the people of Rome into a hundred and ninety-three centuries, which formed ſix claſſes; and ranking the rich, who were in ſmaller numbers, in the firſt centuries; and thoſe in middling circumſtances, who were more numerous, in the next, he flung the indigent multitude into the laſt; and as each century had but one vote, * it was property rather than numbers that decided the elections. BOOK II. Chap. 2.

Solon divided the people of Athens into four claſſes. In this he was directed by the ſpirit of democracy, his intention not being to fix thoſe who were to chuſe, but ſuch as were eligible: therefore leaving to every citizen the right of election, he made (t) the judges eligible from each of thoſe four claſſes; but the magiſtrates he ordered to be choſen only out of the firſt three, conſiſting of perſons of eaſy fortunes.

(t) Dionyſius Halicarn. eulogium of Iſocrates, p. 67. tom. 2. Edit. Wechel. Pollux, l. 8. c. 10. Art. 130.

As the diviſion of thoſe who have a right of ſuffrage, is a fundamental law in republics; the manner alſo of giving this ſuffrage is another fundamental.

The ſuffrage by *lot* is natural to democracy; as that by *choice* is to ariſtocracy.

The ſuffrage by *lot* is a method of electing that offends no one; but animates each citizen with the pleaſing hope of ſerving his country.

Yet as this method is in itſelf defective, it has been the endeavour of the moſt eminent legiſlators to regulate and amend it.

Solon made a law at Athens, that military employments ſhould be conferred by choice;

* See in the Conſiderations on the cauſes of the grandeur and decline of the Romans, chap. 9. how this ſpirit of Servius Tullius was preſerved in the republic.

but

BOOK II. Chap. 2.

but that ſenators and judges ſhould be elected by *lot*.

The ſame legiſlator ordained, that civil magiſtracies, attended with great expence, ſhould be given by choice; and the others by lot.

In order however to amend the ſuffrage by lot, he made a rule, that none but thoſe who preſented themſelves ſhould be elected; that the perſon elected ſhould be examined by judges (h), and that every one ſhould have a right to accuſe him if he were unworthy of the office *: this participated at the ſame time of the ſuffrage by lot, and of that by choice. When the time of their magiſtracy was expired, they were obliged to ſubmit to another judgment in regard to their conduct. Perſons utterly unqualified, muſt have been extremely backward in giving in their names to be drawn by lot.

(h) See the oration of Demoſthenes *de falſâ legat.* and the oration againſt Timarchus.

The law which determines the manner of giving ſuffrage, is likewiſe fundamental in a democracy. It is a queſtion of ſome importance, whether the ſuffrages ought to be public or ſecret. Cicero obſerves (i), that the laws † which rendered them ſecret towards the cloſe of the republic, were the cauſe of its decline. But as this is differently practiſed in different republics, I ſhall offer here my thoughts concerning this ſubject.

(i) lib. 1. & 3. de Leg.

The people's ſuffrages ought doubtleſs to be public; ‡ and this ſhould be conſidered as a fun-

* They uſed even to draw two tickets for each place, one which gave the place, and the other which named the perſon who was to ſucceed, in caſe the firſt was rejected.

† They were called *Leges Tabulares*; two tablets were preſented to each citizen, the firſt marked with an *A*, for *Antiquo*, or *I forbid it*; and the other with an *U* and an *R*, for *Uti Rogas*, or *Be it as you deſire*.

‡ At Athens, the people uſed to lift up their hands.

damental

damental law of democracy. The lower claſs ought to be directed by thoſe of higher rank, and reſtrained within bounds by the gravity of eminent perſonages. Hence, by rendering the ſuffrages ſecret in the Roman republic, all was loſt; it was no longer poſſible to direct a populace that ſought its own deſtruction. But when the body of the nobles are to vote in an ariſtocracy *; or in a democracy, the ſenate †; as the buſineſs is then only to prevent intrigues, the ſuffrages cannot be too ſecret.

Intriguing in a ſenate is dangerous; dangerous it is alſo in a body of nobles; but not ſo in the people, whoſe nature is to act through paſſion. In countries where they have no ſhare in the government, we often ſee them as much inflamed on the account of an actor, as ever they could be for the welfare of the ſtate. The misfortune of a republic is, when intrigues are at an end; which happens when the people are gained by bribery and corruption: in this caſe they grow indifferent to public affairs, and avarice becomes their predominant paſſion. Unconcerned about the government, and every thing belonging to it, they quietly wait for their hire.

It is likewiſe a fundamental law in democracies, that the people ſhould have the ſole power to enact laws. And yet there are a thouſand occaſions on which it is neceſſary the ſenate ſhould have a power of decreeing; nay it is frequently proper to make ſome trial of a law before it is eſtabliſhed. The

* As at Venice.

† The thirty tyrants at Athens ordered the ſuffrages of the *Areopagites* to be public, in order to manage them as they pleaſed, *Lyſias orat. contra Agorat. cap.* 8.

Book II. Chap. 3.

constitutions of Rome and Athens were excellent. The decrees of the senate (k) had the force of laws for the space of a year; but did not become perpetual till they were ratified by the consent of the people.

(k) See Dionys. Halicarn. lib. 4, & 9.

CHAP. III.

Of the Laws relative to the Nature of Aristocracy.

IN an aristocracy the supreme power is lodged in the hands of a certain number of persons. These are invested both with the legislative and executive authority; and the rest of the people are, in respect to them, the same as the subjects of a monarchy in regard to the sovereign.

They do not vote here by lot, for this would be productive of inconveniencies only. And indeed, in a government where the most mortifying distinctions are already established, though they were to be chosen by lot, still they would not cease to be odious; it is the nobleman they envy, and not the magistrate.

When the nobility are numerous, there must be a senate to regulate the affairs which the body of nobles are incapable of deciding, and to prepare others for their decision. In this case it may be said, that the aristocracy is in some measure in the senate, the democracy in the body of the nobles, and the people are a cypher.

It would be a very happy thing in an aristocracy, if the people, in some measure, could be raised from their state of annihilation. Thus at Genoa the bank of St. George being administered by

by the people *, gives them a certain influence in the government, from whence their whole proſperity is derived. BOOK II. Chap. 3.

The ſenators ought by no means to have a right of naming their own members; for this would be the only way to perpetuate abuſes. At Rome, which in its early years was a kind of ariſtocracy, the ſenate did not fill up the vacant places in their own body; the new members were nominated by the † cenſors.

In a republic, the ſudden riſe of a private citizen to exorbitant power produces monarchy, or ſomething more than monarchy. In the latter the laws have provided for, or in ſome meaſure adapted themſelves to, the conſtitution; and the principle of government checks the monarch: but in a republic, where a private citizen has obtained an exorbitant power ‡, the abuſe of this power is much greater, becauſe the laws foreſaw it not, and conſequently made no proviſion againſt it.

There is an exception to this rule, when the conſtitution is ſuch as to have immediate need of a magiſtrate inveſted with an exorbitant power. Such was Rome with her dictators, ſuch is Venice with her ſtate inquiſitors; theſe are formidable magiſtrates, who reſtore, as it were by violence, the ſtate to its liberty. But how comes it that theſe magiſtracies are ſo very different in theſe two republics? It is becauſe Rome ſupported the remains of her ariſtocracy againſt the people; whereas Venice employs her ſtate inquiſitors to maintain her ariſto-

* See Mr Addiſon's Travels to Italy.

† They were named at firſt by the conſuls.

‡ This is what ruined the republic of Rome. See Conſiderations on the cauſes of the grandeur and decline of the Romans.

cracy againſt the nobles. The conſequence was, that at Rome the dictatorſhip could be only of a ſhort duration, as the people act through paſſion and not with deſign. It was neceſſary that a magiſtracy of this kind ſhould be exerciſed with luſtre and pomp, the buſineſs being to intimidate, and not to puniſh the multitude. It was alſo proper that the dictator ſhould be created only for ſome particular affair, and for this only ſhould have an unlimited authority, as he was always created upon ſome ſudden emergency. On the contrary, at Venice they have occaſion for a permanent magiſtracy; for here it is that ſchemes may be ſet on foot, continued, ſuſpended, and reſumed; that the ambition of a ſingle perſon becomes that of a family, and the ambition of one family that of many. They have occaſion for a ſecret magiſtracy, the crimes they puniſh being hatched in ſecrecy and ſilence. This magiſtracy muſt have a general inquiſition, for their buſineſs is not to remedy known diſorders, but to prevent the unknown. In a word, the latter is deſigned to puniſh ſuſpected crimes; whereas the former uſed rather menaces than puniſhment even for crimes that were openly avowed.

In all magiſtracies, the greatneſs of the power muſt be compenſated by the brevity of the duration. This moſt legiſlators have fixed to a year; a longer ſpace would be dangerous, and a ſhorter would be contrary to the nature of government. For who is it that in the management even of his domeſtic affairs would be thus confined? At Raguſa * the chief magiſtrate of the republic is changed every month, the

* Tournefort's voyages.

other

other officers every week, and the governor of the caſtle every day. But this can take place only in a ſmall republic environed * by formidable powers, who might eaſily corrupt ſuch petty and inſignificant magiſtrates.

The beſt ariſtocracy is that in which thoſe who have no ſhare in the legiſlature, are ſo few and inconſiderable, that the governing party have no intereſt in oppreſſing them. Thus when Antipater (l) made a law at Athens, that whoſoever was not worth two thouſand drachms, ſhould have no power to vote, he formed by this method the beſt ariſtocracy poſſible; becauſe this was ſo ſmall a ſum, as excluded very few, and not one of any rank or conſideration in the city.

(l) Diodorus, lib. 18. p. 601. Rhodoman's Edition.

Ariſtocratical families ought therefore, as much as poſſible, to level themſelves in appearance with the people. The more an ariſtocracy borders on democracy, the nearer it approaches to perfection: and, in proportion as it draws towards monarchy, the more it is imperfect.

But the moſt imperfect of all, is that in which the part of the people that obeys, is in a ſtate of civil ſervitude to thoſe who command, as the ariſtocracy of Poland, where the peaſants are ſlaves to the nobility.

CHAP. IV.

Of the Relation of Laws to the Nature of monarchical Government.

THE intermediate, ſubordinate and dependent powers, conſtitute the nature of mo-

* At Lucca the magiſtrates are choſen only for two months.

narchical government; I mean of that in which a ſingle perſon governs by fundamental laws. I ſaid, the *intermediate*, *ſubordinate* and *dependent powers*. And indeed, in monarchies the prince is the ſource of all power political and civil. Theſe fundamental laws neceſſarily ſuppoſe the intermediate channels through which the power flows: for if there be only the momentary and capricious will of a ſingle perſon to govern the ſtate, nothing can be fixed, and of courſe there is no fundamental law.

The moſt natural, intermediate and ſubordinate power, is that of the nobility. This in ſome meaſure ſeems to be eſſential to a monarchy, whoſe fundamental maxim is, *no monarch, no nobility*; *no nobility, no monarch*; but there may be a deſpotic prince.

There are men who have endeavoured in ſome countries in Europe to ſuppreſs the juriſdiction of the nobility; not perceiving that they were driving at the very thing that was done by the parliament of England. Aboliſh the privileges of the lords, the clergy, and cities in a monarchy, and you will ſoon have a popular ſtate, or elſe a deſpotic government.

The courts of a conſiderable kingdom in Europe have, for many ages, been ſtriking at the patrimonial juriſdiction of the lords and clergy. We do not pretend to cenſure theſe ſage magiſtrates; but we leave it to the public to judge, how far this may alter the conſtitution.

Far am I from being prejudiced in favour of the privileges of the clergy; however, I ſhould be glad their juriſdiction were once fixed. The queſtion is not, whether their juriſdiction was juſtly eſtabliſhed;

eſtabliſhed; but whether it be really eſtabliſhed; whether it conſtitutes a part of the laws of the country, and is in every reſpect relative to thoſe laws; whether between two powers acknowledged independent, the conditions ought not to be reciprocal; and whether it be not equally the duty of a good ſubject to defend the prerogative of the prince, and to maintain the limits which from time immemorial he has preſcribed to his authority.

Though the eccleſiaſtic power be ſo dangerous in a republic, yet it is extremely proper in a monarchy, eſpecially of the abſolute kind. What would become of Spain and Portugal ſince the ſubverſion of their laws, were it not for this only barrier againſt the incurſions of arbitrary power? A barrier ever uſeful when there is no other: for ſince a deſpotic government is productive of the moſt dreadful calamities to human nature, the very evil that reſtrains it is beneficial to the ſubject.

In the ſame manner as the ocean, threatening to overflow the whole earth, is ſtopped by weeds and pebbles that lie ſcattered along the ſhore; ſo monarchs, whoſe power ſeems unbounded, are reſtrained by the ſmalleſt obſtacles, and ſuffer their natural pride to be ſubdued by ſupplication and prayer.

The Engliſh, to favour their liberty, have aboliſhed all the intermediate powers of which their monarchy was compoſed. They have a great deal of reaſon to be jealous of this liberty; were they ever to be ſo unhappy as to loſe it, they would be one of the moſt ſervile nations upon earth.

Mr. Law, through ignorance both of a republican and monarchical conſtitution, was one of the greateſt promoters of abſolute power ever known in Europe. Beſides the violent and extraordinary changes owing to his direction, he would fain ſuppreſs all the intermediate ranks, and aboliſh the political communities. He was diſſolving * the monarchy by his chimerical reimburſements, and ſeemed as if he even wanted to redeem the conſtitution.

It is not enough to have intermediate powers in a monarchy; there muſt be alſo a depoſitary of the laws. This depoſitary can only be the judges of the ſupreme courts of juſtice, who promulge the new laws, and revive the obſolete. The natural ignorance of the nobility, their indolence, and contempt of civil government, require there ſhould be a body inveſted with a power of reviving and executing the laws, which would be otherwiſe buried in oblivion. The prince's council are not a proper depoſitary. They are naturally the depoſitary of the momentary will of the prince, and not of the fundamental laws. Beſides, the prince's council is continually changing; it is neither permanent, nor numerous; neither has it a ſufficient ſhare of the confidence of the people; conſequently it is incapable to ſet them right in difficult conjunctures, or to reduce them to proper obedience.

Deſpotic governments, where there are no fundamental laws, have no ſuch kind of depoſitary. Hence it is that religion has generally ſo much influence in thoſe countries, becauſe it forms

* Ferdinand king of Aragon made himſelf grand maſter of the orders, and that alone changed the conſtitution.

a kind

a kind of permanent depoſitary; and if this cannot be ſaid of religion, it may of the cuſtoms that are reſpected inſtead of laws. BOOK II. Chap. 5.

CHAP. V.

Of the Laws relative to the Nature of a deſpotic Government.

FROM the nature of deſpotic power it follows, that the ſingle perſon, inveſted with this power, commits the execution of it alſo to a ſingle perſon. A man whom his ſenſes continually inform, that he himſelf is every thing, and his ſubjects nothing, is naturally lazy, voluptuous, and ignorant. In conſequence of this, he neglects the management of public affairs. But were he to commit the adminiſtration to many, there would be continual diſputes among them; each would form intrigues to be his firſt ſlave; and he would be obliged to take the reins into his own hands. It is therefore more natural for him to reſign it to a vizir*, and to inveſt him with the ſame power as himſelf. The creation of a vizir is a fundamental law of this government.

It is related of a pope, that he had ſtarted an infinite number of difficulties againſt his election, from a thorough conviction of his incapacity. At length he was prevailed on to accept of the pontificate; and reſigned the adminiſtration entirely to his nephew. He was ſoon ſtruck with ſurprize, and ſaid, *I ſhould never have thought that theſe things were ſo eaſy.* The ſame may be ſaid of the

* The Eaſtern kings are never without vizirs, ſays Sir John Chardin.

princes

princes of the East, who, being educated in a prison where eunuchs corrupt their hearts and debase their understandings, and where they are frequently kept ignorant even of their high rank; when drawn forth in order to be placed on the throne, they are at first confounded: but as soon as they have chosen a vizir, and abandoned themselves in their seraglio to the most brutal passions, pursuing, in the midst of a prostituted court, every capricious extravagance; they could never have dreamt to find matters so easy.

The more extensive the empire, the larger the seraglio; and consequently the more voluptuous the prince. Hence the more nations such a sovereign has to rule, the less he attends to the cares of government; the more important his affairs, the less he makes them the subject of his deliberations.

BOOK III.

Of the Principles of the three kinds of Government.

CHAP. I.

Difference between the Nature and Principle of Government.

AFTER having examined the laws relative to the nature of each government, we must inveſtigate thoſe which relate to its principle. Book III. Chap. 1. and 2.

There is this difference between * the nature and principle of government; that the former is that by which it is conſtituted, the latter that by which it is made to act. One is its particular ſtructure, and the other the human paſſions which ſet it in motion.

Now laws ought to be no leſs relative to the principle than to the nature of each government. We muſt therefore enquire into this principle, which ſhall be the ſubject of this third book.

CHAP. II.

Of the Principle of different Governments.

I HAVE already obſerved, that it is the nature of a republican government, that either the col-

* This is a very important diſtinction, from whence I ſhall draw many conſequences; for it is the key of an infinite number of laws.

lective

lective body of the people, or particular families, ſhould be poſſeſſed of the ſupreme power: of a monarchy, that the prince ſhould have this power, but in the execution of it ſhould be directed by eſtabliſhed laws: of a deſpotic government, that a ſingle perſon ſhould rule according to his own will and caprice. This enables me to diſcover their three principles; which are naturally derived from thence. I ſhall begin with a republican government, and in particular with that of democracy.

CHAP. III.

Of the Principle of Democracy.

THERE is no great ſhare of probity neceſſary to ſupport a monarchical or deſpotic government. The force of laws in one, and the prince's arm in the other, are ſufficient to direct and maintain the whole. But in a popular ſtate, one ſpring more is neceſſary, namely, *virtue*.

What I have here advanced, is confirmed by the unanimous teſtimony of hiſtorians, and is extremely agreeable to the nature of things. For it is clear, that in a monarchy, where he who commands the execution of the laws, generally thinks himſelf above them, there is leſs need of virtue than in a popular government, where the perſon entruſted with the execution of the laws, is ſenſible of his being ſubject to their direction.

Clear it is, alſo, that a monarch, who through bad advice or indolence ceaſes to enforce the execution of the laws, may eaſily repair the evil; he

he has only to follow other advice; or to ſhake off this indolence. But when, in a popular government, there is a ſuſpenſion of the laws, as this can proceed only from the corruption of the republic, the ſtate is certainly undone.

A very droll ſpectacle it was in the laſt century to behold the impotent efforts of the Engliſh towards the eſtabliſhment of democracy. As they who had a ſhare in the direction of public affairs were void of virtue; as their ambition was inflamed by the ſucceſs of the moſt daring of their members *; as the prevailing parties were ſucceſſively animated by the ſpirit of faction, the government was continually changing: the people, amazed at ſo many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the moſt violent ſhocks, they were obliged to have recourſe to the very government which they had ſo wantonly proſcribed.

When Sylla thought of reſtoring Rome to her liberty, this unhappy city was incapable of that bleſſing. She had only the feeble remains of virtue, which were continually diminiſhing: inſtead of being rouſed out of her lethargy, by Cæſar, Tiberius, Caius Claudius, Nero, Domitian, ſhe riveted every day her chains; if ſhe ſtruck ſome blows, her aim was at the tyrant, but not at the uſurpation.

The politic Greeks, who lived under a popular government, knew no other ſupport than virtue. The modern inhabitants of that country are entirely taken up with manufactures, commerce, finances, opulence and luxury.

* Cromwell.

When

Book III. Chap. 3.

When virtue is baniſhed, ambition invades the minds of thoſe who are diſpoſed to receive it, and avarice poſſeſſes the whole community. The objects of their deſires are changed; what they were fond of before, is become indifferent; they were free, while under the reſtraint of laws, but they would fain now be free to act againſt law; and as each citizen is like a ſlave who has run away from his maſter, what was a maxim of equity, he calls rigour; what was a rule of action, he ſtiles conſtraint; and to precaution he gives the name of fear. Frugality, and not the thirſt of gain, now paſſes for avarice. Formerly the wealth of individuals conſtituted the public treaſure; but now this is become the patrimony of private perſons. The members of the commonwealth riot on the public ſpoils, and its ſtrength is only the power of a few, and the licentiouſneſs of many.

Athens was poſſeſſed of the ſame number of forces, when ſhe triumphed ſo glorioufly, and when with ſo much infamy ſhe was enſlaved. She had twenty thouſand citizens (a), when ſhe defended the Greeks againſt the Perſians, when ſhe contended for empire with Sparta, and invaded Sicily. She had twenty thouſand when Demetrius Phalereus numbered them*, as ſlaves are told by the head in a market-place. When Philip attempted to lord it over Greece, and appeared at the gates of Athens †, ſhe had even then loſt nothing but time. We may ſee in Demoſthenes how difficult it was to awake her: ſhe

(a) Plutarch, life of Pericles, Plato in Critia.

* She had at that time twenty-one thouſand citizens, ten thouſand ſtrangers, and four hundred thouſand ſlaves. See Athenæus, Book 6.

† She had then twenty thouſand citizens. See Demoſthenes in Ariſtog.

dreaded

dreaded Philip, not as the enemy of her liberty, but of her pleasures *. This famous city, which had withstood so many defeats, and after having been so often destroyed, had as often risen out of her ashes, was overthrown at Chæronea, and at one blow deprived of all hopes of resource. What does it avail her, that Philip sends back her prisoners, if he does not return her men? It was ever after as easy to triumph over the Athenian forces, as it had been difficult to subdue her virtue. BOOK III. Chap. 3.

How was it possible for Carthage to maintain her ground? When Hannibal, upon his being made prætor, endeavoured to hinder the magistrates from plundering the republic, did not they complain of him to the Romans? Wretches, who would fain be citizens without a city, and beholden for their riches to their very destroyers! Rome soon insisted upon having three hundred of their principal citizens as hostages; she obliged them next to surrender their arms and ships; and then she declared war †. From the desperate efforts of this defenceless city, one may judge of what she might have performed in her full vigour, and assisted by virtue.

CHAP. IV.

Of the Principle of Aristocracy.

AS virtue is necessary in a popular government, it is requisite also under an aristocracy.

* They had passed a law, which rendered it a capital crime for any one to propose applying the money designed for the theatres to military service.

† This lasted three years.

Book III. Chap. 4.

True it is, that in the latter it is not ſo abſolutely requiſite.

The people, who in reſpect to the nobility are the ſame as the ſubjects with regard to a monarch, are reſtrained by their laws. They have, therefore, leſs occaſion for virtue than the people in a democracy. But how are the nobility to be reſtrained? They who are to execute the laws againſt their collegues, will immediately perceive they are acting againſt themſelves. Virtue is therefore neceſſary in this body, from the very nature of the conſtitution.

An ariſtocratical government has an inherent vigour, unknown to democracy. The nobles form a body, who by their prerogative, and for their own particular intereſt, reſtrain the people; it is ſufficient, that there are laws in being to ſee them executed.

But eaſy as it may be for the body of the nobles to reſtrain the people, it is difficult to reſtrain themſelves *. Such is the nature of this conſtitution, that it ſeems to ſubject the very ſame perſons to the power of the laws, and at the ſame time to exempt them.

Now ſuch a body as this can reſtrain itſelf only two ways; either by a very eminent virtue, which puts the nobility in ſome meaſure on a level with the people, and may be the means of forming a great republic; or by an inferior virtue, which puts them at leaſt upon a level with one another, and on this their preſervation depends.

* Public crimes may be puniſhed, becauſe it is here a common concern; but private crimes will go unpuniſhed, becauſe it is the common intereſt not to puniſh them.

Moderation

Moderation is therefore the very ſoul of this government; a moderation I mean founded on virtue, not that which proceeds from indolence and puſillanimity.

CHAP. V.

That Virtue is not the Principle of a monarchical Government.

IN monarchies, policy effects great things with as little virtue as poſſible. Thus in the niceſt machines, art has reduced the number of movements, ſprings, and wheels.

The ſtate ſubſiſts independently of the love of our country, of the thirſt of true glory, of ſelf-denial, of the ſacrifice of our deareſt intereſts, and of all thoſe heroic virtues which we admire in the ancients, and to us are known only by ſtory.

The laws ſupply here the place of thoſe virtues; they are by no means wanted, and the ſtate diſpenſes with them: an action performed here in ſecret is in ſome meaſure of no conſequence.

Though all crimes be in their own nature public, yet there is a diſtinction between crimes really public, and thoſe that are private, which are ſo called, becauſe they are more injurious to individuals than to the community.

Now in republics private crimes are more public, that is, they attack the conſtitution more than they do individuals; and in monarchies, public crimes are more private, that is, they are more prejudicial to private people than to the conſtitution.

I beg that no one will be offended with what I have been ſaying; my obſervations are founded on the unanimous teſtimony of hiſtorians. I am not ignorant that virtuous princes are no ſuch very rare inſtance; but I venture to affirm, that in a monarchy, it is extremely difficult for the people to be virtuous *.

Let us compare what the hiſtorians of all ages have aſſerted concerning the courts of monarchs; let us recollect the converſations and ſentiments of people of all countries in reſpect to the wretched character of courtiers; and we ſhall find, that theſe are not airy ſpeculations, but truths confirmed by a ſad and melancholy experience.

Ambition in idleneſs; meanneſs mixed with pride; a deſire of riches without induſtry; averſion to truth; flattery, perfidy, violation of engagements, contempt of civil duties, fear of the prince's virtue, hope from his weakneſs, but above all, a perpetual ridicule caſt upon virtue, are, I think, the characteriſtics by which moſt courtiers in all ages and countries have been conſtantly diſtinguiſhed. Now it is exceeding difficult for the leading men of the nation to be knaves, and the inferior ſort to be honeſt; for the former to be cheats, and the latter to reſt ſatisfied with being only dupes.

But if there ſhould chance to be ſome unlucky honeſt man † among the people, Cardinal Richelieu,

* I ſpeak here of political virtue, which is alſo moral virtue as it is directed to the public good; very little of private moral virtue, and not at all of that virtue which relates to revealed truths. This will appear better, Book V. chap. 2.

† This is to be underſtood in the ſenſe of the preceding note.

in

in his political teſtament, ſeems to hint, that a prince ſhould take care not to employ him *. So true is it, that virtue is not the ſpring of this government! It is not indeed excluded, but it is not the ſpring of government. BOOK III. Chap. 6.

CHAP. VI.

In what manner Virtue is ſupplied in a monarchical Government.

BUT it is high time for me to have done with this ſubject, leſt I ſhould be ſuſpected of writing a ſatire againſt monarchical government. Far be it from me; if monarchy wants one ſpring, it is provided with another. Honor, that is, the prejudice of every perſon and rank, ſupplieth the place of the political virtue, of which I have been ſpeaking, and is everywhere her repreſentative: here it is capable of inſpiring the moſt glorious actions, and, joined with the force of laws, may lead us to the end of government as well as virtue itſelf.

Hence, in well regulated monarchies, they are almoſt all good ſubjects, and very few good men; for to be a good man †, a good intention is neceſſary (a), and we ſhould love our country not ſo much on our own account, as out of regard to the community. (a) See the note p. 34.

* We muſt not, ſays he, employ people of mean extraction; they are too rigid and moroſe.

† This word *good man*, is underſtood here in a political ſenſe only.

CHAP. VII.

Of the Principle of Monarchy.

BOOK III. Chap. 7.

A Monarchical government ſuppoſeth, as we have already obſerved, preeminences and ranks, as likewiſe a noble deſcent. Now ſince it is the nature of honor to aſpire to preferments and titles, it is properly placed in this government.

Ambition is pernicious in a republic. But in a monarchy it has ſome good effects; it gives life to the government, and is attended with this advantage, that it is no way dangerous, becauſe it may be continually checked.

It is with this kind of government as with the ſyſtem of the univerſe, in which there is a power that conſtantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honor ſets all the parts of the body politic in motion, and by its very action connects them; thus each individual advances the public good, while he only thinks of promoting his own intereſt.

True it is, that, philoſophically ſpeaking, it is a falſe honor which moves all the parts of the government; but even this falſe honor is as uſeful to the public, as true honor could poſſibly be to private people.

Is it not a very great point, to oblige men to perform the moſt difficult actions, ſuch as require an extraordinary exertion of fortitude and reſolution, without any other recompence, than that glory and applauſe?

CHAP.

CHAP. VIII.

That Honor is not the Principle of deſpotic Government.

HONOR is far from being the principle of deſpotic government: mankind being here all upon a level, no one perſon can prefer himſelf to another; and as on the other hand they are all ſlaves, they can give themſelves no ſort of preference. BOOK III. Chap. 8.

Beſides, as honor has its laws and rules; as it knows not how to ſubmit; as it depends in a great meaſure on a man's own caprice, and not on that of another perſon; it can be found only in countries in which the conſtitution is fixed, and where they are governed by ſettled laws.

How can deſpotiſm bear with honor? This glories in the contempt of life; and that is founded in the power of taking it away. How can honor, on the other hand, bear with deſpotiſm? The former has its fixed rules, and peculiar caprices; but the latter is directed by no rule, and its own caprices are ſubverſive of all others.

Honor therefore, a thing unknown in arbitrary governments, ſome of which have not even a proper word to expreſs it[d]), is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws, and even to the virtues themſelves.

(d) See Perry, P. 447.

CHAP. IX.

Of the Principle of deſpotic Government.

Book III. Chap. 9.

AS virtue is neceſſary in a republic, and in a monarchy honor, ſo fear is neceſſary in a deſpotic government: with regard to virtue, there is no occaſion for it, and honor would be extremely dangerous.

Here the immenſe power of the prince is devolved intirely upon thoſe, whom he is pleaſed to intruſt with the adminiſtration. Perſons capable of ſetting a value upon themſelves, would be likely to create diſturbances. Fear muſt therefore depreſs their ſpirits, and extinguiſh even the leaſt ſenſe of ambition.

A moderate government may, whenever it pleaſes, and without the leaſt danger, relax its ſprings. It ſupports itſelf by the laws, and by its own internal ſtrength. But when a deſpotic prince ceaſes one ſingle moment to lift up his arm, when he cannot inſtantly demoliſh thoſe whom he has entruſted with the firſt employments *, all is over: for as fear, the ſpring of this government, no longer ſubſiſts, the people are left without a protector.

It is probably in this ſenſe the Cadis maintained that the Grand Seignior was not obliged to keep his word or oath, when he limited thereby his authority (c).

(c) Ricault *on the Ottoman empire.*

It is neceſſary that the people ſhould be judged by laws, and the great men by the caprice of the prince; that the lives of the loweſt ſubject ſhould be ſafe, and the baſhaw's head ever in danger. We cannot mention theſe monſtrous governments

* As it often happens in a military ariſtocracy.

without

without horror. The Sophi of Perſia, dethroned in our days by Mahomet the ſon of Miriveis, ſaw the conſtitution ſubverted before this revolution, becauſe he had been too ſparing of blood (d). BOOK III. Chap. 10.

(d) See the hiſtory of this revolution by father Ducerceau.

Hiſtory informs us, that the horrid cruelties of Domitian ſtruck ſuch a terror into the governors, that the people recovered themſelves a little under his reign *. Thus a torrent overflows one ſide of a country, and on the other leaves fields untouched, where the eye is refreſhed by the proſpect of fine meadows.

CHAP. X.

Difference of Obedience in moderate and deſpotic Governments.

IN deſpotic ſtates, the nature of government requires the moſt paſſive obedience; and when once the prince's will is made known, it ought infallibly to produce its effect.

Here they have no limitations or reſtrictions, no mediums, terms, equivalents, or remonſtrances; no change to propoſe: man is a creature that blindly ſubmits to the abſolute will of the ſovereign.

In a country like this they are no more allowed to repreſent their apprehenſions of a future danger, than to impute their miſcarriage to the capriciouſneſs of fortune. Man's portion here, like that of beaſts, is inſtinct, compliance and puniſhment.

Little does it then avail to plead the ſentiments of nature, filial reſpect, conjugal or parental ten-

* His was a military conſtitution, which is one of the ſpecies of deſpotic government.

BOOK III. Chap. 10.

derneſs, the laws of honor, or want of health; the order is given, and that is ſufficient.

In Perſia, when the king has condemned a perſon, it is no longer lawful to mention his name, or to intercede in his favor. Even if the prince were intoxicated, or non compos, the decree muſt be executed (e); otherwiſe he would contradict himſelf, and the law admits of no contradiction. This has been the way of thinking in that country in all ages; as the order which Ahaſuerus gave, to exterminate the Jews, could not be revoked, they were allowed the liberty of defending themſelves.

(e) See Sir John Chardin.

One thing however may be ſometimes oppoſed to the prince's will (f), namely, religion. They will abandon, nay they will ſlay a parent, if the prince ſo commands; but he cannot oblige them to drink wine. The laws of religion are of a ſuperior nature, becauſe they bind the ſovereign as well as the ſubject. But with reſpect to the law of nature, it is otherwiſe; the prince is no longer ſuppoſed to be a man.

(f) Ibid.

In monarchical and moderate ſtates, the power is limited by its very ſpring, I mean, by honor, which like a monarch reigns over the prince and his people. They will not alledge to their ſovereign the laws of religion; a courtier would be apprehenſive of rendering himſelf ridiculous. But the laws of honor will be appealed to on all occaſions. Hence ariſe the reſtrictions neceſſary to obedience; honor is naturally ſubject to whims, by which the ſubject's ſubmiſſion will be ever directed.

Though the manner of obeying be different in theſe two kinds of government, the power is the

the ſame. On which ſide ſoever the monarch turns, he inclines the ſcale, and is obeyed. The whole difference is, that in a monarchy the prince receives inſtruction, at the ſame time that his miniſters have greater abilities, and are more verſed in public affairs than the miniſters of a deſpotic government.

CHAP. XI.

Reflections on the preceding Chapters.

SUCH are the principles of the three ſorts of government: which does not imply, that in a particular republic they actually are, but that they ought to be, virtuous: nor does it prove, that in a particular monarchy they are actuated by honor, or in a particular deſpotic government by fear; but that they ought to be directed by theſe principles, otherwiſe the government is imperfect.

BOOK IV.

That the Laws of Education ought to be relative to the Principles of Government.

CHAP. I.

Of the Laws of Education.

Book IV. Chap. 1. and 2.

THE laws of education are the firſt impreſſions we receive; and as they prepare us for civil life, every private family ought to be governed by the plan of that great houſehold which comprehends them all.

If the people in general have a principle, their conſtituent parts, that is, the ſeveral families, will have one alſo. The laws of education will be therefore different in each ſpecies of government; in monarchies, they will have honor for their object; in republics, virtue; in deſpotic governments, fear.

CHAP. II.

Of Education in Monarchies.

IN monarchies the principal branch of education is not taught in colleges or academies. It commences, in ſome meaſure, at our ſetting out in the world; for this is the ſchool of what we call honor, that univerſal preceptor which ought everywhere to be our guide.

Here

Here it is that we conſtantly hear three rules or maxims, viz. *that we ſhould have a certain nobleneſs in our virtues, a kind of frankneſs in our morals, and a particular politeneſs in our behaviour.*

The virtues we are here taught, are leſs what we owe to others, than to ourſelves; they are not ſo much what draws us towards ſociety, as what diſtinguiſhes us from our fellow citizens.

Here the actions of men are judged, not as virtuous, but as ſhining; not as juſt, but as great; not as reaſonable, but as extraordinary.

When honor here meets with any thing noble in our actions, it is either a judge that approves them, or a ſophiſter by whom they are excuſed.

It allows of gallantry when united with the idea of ſenſible affection, or with that of conqueſt; this is the reaſon why we never meet with ſo ſtrict a purity of morals in monarchies, as in republican governments.

It allows of cunning and craft, when joined with the notion of greatneſs of ſoul or importance of affairs; as, for inſtance, in politics, with whoſe fineſſes it is far from being offended.

It does not forbid adulation, but when ſeparate from the idea of a large fortune, and connected only with the ſenſe of our mean condition.

With regard to morals, I have obſerved, that the education of monarchies ought to admit of a certain frankneſs and open carriage. Truth therefore in converſation is here a neceſſary point. But is it for the ſake of truth? by no means. Truth is requiſite only, becauſe a perſon habituated to veracity has an air of boldneſs and freedom. And indeed, a man of this ſtamp ſeems to lay a ſtreſs only on the

things themſelves, not on the manner in which they are received.

Hence it is, that in proportion as this kind of frankneſs is commended, that of the common people is deſpiſed, which has nothing but truth and ſimplicity for its object.

In fine, the education of monarchies requires a certain politeneſs of behaviour. Man, a ſociable animal, is formed to pleaſe in ſociety; and a perſon that would break through the rules of decency, ſo as to ſhock thoſe he converſed with, would loſe the public eſteem, and become incapable of doing any good.

But politeneſs, generally ſpeaking, does not derive its original from ſo pure a ſource. It riſes from a deſire of diſtinguiſhing ourſelves. It is pride that renders us polite: we are flattered with being taken notice of for a behaviour that ſhews we are not of a mean condition, and that we have not been bred up with thoſe who in all ages are conſidered as the ſcum of the people.

Politeneſs, in monarchies, is naturaliſed at court. One man exceſſively great renders every body elſe little. Hence that regard, which is paid to our fellow ſubjects; hence that politeneſs, equally pleaſing to thoſe by whom, as to thoſe towards whom, it is practiſed; becauſe it gives people to underſtand, that a perſon actually belongs, or at leaſt deſerves to belong, to the court.

A court air conſiſts in quitting a real for a borrowed greatneſs. The latter pleaſes the courtier more than the former. It inſpires him with a certain diſdainful modeſty, which ſhows itſelf externally, but whoſe pride inſenſibly diminiſhes in proportion to its diſtance from the ſource of this greatneſs. At

At court we find a delicacy of taſte in every thing, a delicacy ariſing from the conſtant uſe of the ſuperfluities of life, from the variety, and eſpecially the ſatiety of pleaſures, from the multiplicity and even confuſion of fancies, which, if they are but agreeable, are ſure of being well received.

Theſe are the things which properly fall within the province of education, in order to form what we call a man of honor, a man poſſeſſed of all the qualities and virtues requiſite in this kind of government.

Here it is that honor interferes with every thing, mixing even with people's manner of thinking, and directing their very principles.

To this whimſical honor it is owing that the virtues are only juſt what it pleaſes; it adds rules of its own invention to every thing preſcribed to us; it extends or limits our duties according to its own fancy, whether they proceed from religion, politics, or morality.

There is nothing ſo ſtrongly inculcated in monarchies, by the laws, by religion, and honor, as ſubmiſſion to the prince's will; but this very honor tells us, that the prince never ought to command a diſhonorable action, becauſe this would render us incapable of ſerving him.

Crillon refuſed to aſſaſſinate the duke of Guiſe, but offered to fight him. After the maſſacre of St. Bartholomew, Charles IX. having ſent orders to the governors in the ſeveral provinces for the Hugonots to be murdered, viſcount Dorte, who commanded at Bayonne, wrote thus to the king, (s) *Sire, among the inhabitants of this town, and your majeſty's troops, I could not find ſo much*

(s) See D'Aubigne's hiſtory.

much as one executioner; they are honeſt citizens and brave ſoldiers. We jointly therefore beſeech your majeſty to command our arms and lives in things that are practicable. This great and generous ſoul looked upon a baſe action as a thing impoſſible.

There is nothing that honor more ſtrongly recommends to the nobility, than to ſerve their prince in a military capacity. And indeed this is their favourite profeſſion, becauſe its dangers, its ſucceſs, and even its miſcarriages, are the road to grandeur. Yet this very law of its own making, honor chuſes to explain; and in caſe of any affront, it requires or permits us to retire.

It inſiſts alſo that we ſhould be at liberty either to ſeek or to reject employments; a liberty which it prefers even to an ample fortune.

Honor therefore has its ſupreme laws, to which education is obliged to conform *. The chief of theſe are, that we are permitted to ſet a value upon our fortune, but are abſolutely forbidden to ſet any upon our lives.

The ſecond is, that when we are raiſed to a poſt or preferment, we ſhould never do or permit any thing, which may ſeem to imply that we look upon ourſelves as inferior to the rank we hold.

The third is, that thoſe things which honor forbids, are more rigorouſly forbidden, when the laws do not concur in the prohibition; and thoſe it commands, are more ſtrongly inſiſted upon, when they happen not to be commanded by law.

* We mention here what actually is, and not what ought to be: honor is a prejudice, which religion ſometimes endeavours to remove, and at other times to regulate.

CHAP.

CHAP. III.

Of Education in a deſpotic Government.

AS education in monarchies tends to raiſe and ennoble the mind, in deſpotic governments its only aim is to debaſe it. Here it muſt neceſſarily be ſervile; even in power ſuch an education will be an advantage, becauſe every tyrant is at the ſame time a ſlave. Book IV. Chap. 3.

Exceſſive obedience ſuppoſes ignorance in the perſon that obeys: the ſame it ſuppoſes in him that commands; for he has no occaſion to deliberate, to doubt, to reaſon; he has only to will.

In deſpotic ſtates, each houſe is a ſeparate government. As education therefore conſiſts chiefly in ſocial converſe, it muſt be here very much limited; all it does is to ſtrike the heart with fear, and to imprint on the underſtanding a very ſimple notion of a few principles of religion. Learning here proves dangerous, emulation fatal; and as to virtue, Ariſtotle cannot think there is any one virtue belonging to ſlaves (*); if ſo, education in deſpotic countries is confined within a very narrow compaſs.

(*) Polit. lib. 1.

Here therefore education is in ſome meaſure needleſs: to give ſomething, one muſt take away every thing; and begin with making a bad ſubject, in order to make a good ſlave.

For why ſhould education take pains in forming a good citizen, only to make him ſhare in the public miſery? If he loves his country, he will ſtrive to relax the ſprings of government; if he miſcarries, he will be undone; if he ſucceeds, he muſt expoſe himſelf, the prince, and his country, to ruin.

CHAP.

CHAP. IV.

Difference between the Effects of ancient and modern Education.

Book IV. Chap. 4. and 5.

MOST of the ancients lived under governments that had virtue for their principle; and when this was in full vigor, they performed actions unuſual in our times, and at which our narrow minds are aſtoniſhed.

Another advantage their education had over ours; it never was effaced by contrary impreſſions. Epaminondas, the laſt year of his life, ſaid, heard, beheld, and performed the very ſame things, as at the age in which he received the firſt principles of his education.

In our days we receive three different or contrary educations, namely, of our parents, of our maſters, and of the world. What we learn in the latter, effaces all the ideas of the former. This in ſome meaſure ariſes from the contraſt we experience between our religious and worldly engagements; a thing unknown to the ancients.

CHAP. V.

Of Education in a republican Government.

IT is in a republican government that the whole power of education is required. The fear of deſpotic governments naturally riſes of itſelf amidſt threats and puniſhments; the honor of monarchies is favoured by the paſſions, and favours them in its turn: but virtue is a ſelf-renunciation, which is ever arduous and painful.

This virtue may be defined, the love of the laws and of our country. As ſuch love requires a conſtant

ſtant preference of public to private intereſt, it is the ſource of all private virtues; for they are nothing more than this very preference itſelf.

This love is peculiar to democracies. In theſe alone the government is intruſted to private citizens. Now government is like every thing elſe; to preſerve it, we muſt love it.

Has it ever been heard that kings were not fond of monarchy, or that deſpotic princes hated arbitrary power?

Every thing therefore depends on eſtabliſhing this love in a republic; and to inſpire it ought to be the principal buſineſs of education: but the ſureſt way of inſtilling it into children, is for parents to ſet them an example.

People have it generally in their power to communicate their ideas to their children; but they are ſtill better able to transfuſe their paſſions.

If it happens otherwiſe, it is becauſe the impreſſions made at home are effaced by thoſe they have received abroad.

It is not the young people that degenerate: they are not ſpoilt till thoſe of maturer age are already ſunk into corruption.

CHAP. VI.

Of ſome Inſtitutions among the Greeks.

THE ancient Greeks, convinced of the neceſſity that people who live under a popular government ſhould be trained up to virtue, made very ſingular inſtitutions in order to inſpire it. Upon ſeeing in the life of Lycurgus the laws that legiſlator gave to the Lacedæmonians, I imagine I am

BOOK IV. Chap. 6.

reading the history of the Sevarambes. The laws of Crete were the model of those of Sparta; and those of Plato reformed them.

Let us reflect here a little on the extensive genius with which those legislators must have been endowed, to perceive, that by striking at received customs, and by confounding all manner of virtues, they should display their wisdom to the universe. Lycurgus, by blending theft with the spirit of justice, the hardest servitude with excess of liberty, the most rigid sentiments with the greatest moderation, gave stability to his city. He seemed to deprive her of all resources, such as arts, commerce, money, walls: ambition prevailed among the citizens without hopes of improving their fortune; they had natural sentiments without the tie of a son, husband, or father; and chastity was stript even of modesty and shame. This was the road that led Sparta to grandeur and glory; and so infallible were these institutions, that it signified nothing to gain a victory over that republic, without subverting her polity *.

By these laws Crete and Laconia were governed. Sparta was the last that fell a prey to the Macedonians, and Crete to the Romans †. The Samnites had the same institutions, which furnished those very Romans with the subject of four and twenty triumphs(a).

(a) Florus, lib. 1.

A character so extraordinary in the institutions of Greece, has shewn itself lately in the dregs and corruption

* Philopæmen obliged the Lacedæmonians to change their manner of educating their children, being convinced, that if he did not take this measure, they would always be noted for their magnanimity. *Plutarch, Life of Philopæmen.* See Livy, book 38.

† She defended her laws and liberty for the space of three years. See the 98th, 99th, and 100th book of Livy, in Florus's epitome. She made a braver resistance than the greatest kings.

ruption of modern times *. A very honeſt legiſlator has formed a people, to whom probity ſeems as natural as bravery to the Spartans. Mr. Penn is a real Lycurgus; and though the former made peace his principal aim, as the latter did war, yet they reſemble one another in the ſingular way of living to which they reduced their people, in the aſcendant they had over free men, in the prejudices they overcame, and in the paſſions which they ſubdued.

Another example we have from Paraguay. This has been the ſubject of an invidious charge againſt a Society that conſiders the pleaſure of commanding as the only happineſs in life: but it will be ever a glorious undertaking to render government ſubſervient to human happineſs †.

It is glorious indeed for this Society to have been the firſt in pointing out to thoſe countries the idea of religion joined with that of humanity. By repairing the devaſtations of the Spaniards, ſhe has begun to heal one of the moſt dangerous wounds that the human ſpecies ever received.

An exquiſite ſenſibility to whatever ſhe diſtinguiſhes by the name of honor, joined to her zeal for a religion which is far more humbling in reſpect to thoſe who receive, than to thoſe who preach its doctrines, has ſet her upon vaſt undertakings, which ſhe has accompliſhed with ſucceſs. She has drawn wild people from their woods, ſecured them a maintenance, and clothed their nakedneſs; and had ſhe only by this ſtep

* In *face Romuli.* Cicero.

† The Indians of Paraguay do not depend on any particular lord, they pay only a fifth of the taxes, and are allowed the uſe of fire-arms to defend themſelves.

improved the induſtry of mankind, it would have been ſufficient to eternize her fame.

They who ſhall attempt hereafter to introduce the like inſtitutions, muſt eſtabliſh the community of goods as preſcribed in Plato's republic; that high reſpect he required for the gods; that ſeparation from ſtrangers, for the preſervation of morals; and an extenſive commerce carried on by the community, and not by private citizens: they muſt give our arts without our luxury, and our wants without our deſires.

They muſt proſcribe money, the effect of which is to ſwell people's fortunes beyond the bounds preſcribed by nature; to learn to preſerve for no purpoſe what has been idly hoarded up; to multiply without end our deſires; and to ſupply the ſterility of nature, of whom we have received very ſcanty means of inflaming our paſſions, and of corrupting each other.

(c) Plutarch in *his queſtions concerning the Greek affairs.*

"The Epidamnians (c) perceiving their morals "depraved by converſing with barbarians, choſe "a magiſtrate for making all contracts and ſales "in the name and behalf of the city." Commerce then does not corrupt the conſtitution, and the conſtitution does not deprive the ſociety of the advantages of commerce.

CHAP. VII.

In what Caſe theſe ſingular Inſtitutions may be of Service.

INSTITUTIONS of this kind may be proper in republics, becauſe they have virtue for their principle; but to excite men to honor in monarchies,

narchies, or to imprint fear in deſpotic governments, leſs pains are neceſſary. BOOK IV. Chap. 7.

Beſides, they cannot take place but in a ſmall ſtate*, in which there is a poſſibility of a general education, and of training up the body of the people like a ſingle family.

The laws of Minos, of Lycurgus, and of Plato, ſuppoſe a particular attention and care, which the citizens ought to have over one another's conduct. But an attention of this kind cannot be expected in the confuſion, and multitude of affairs in which a large nation is intangled.

In inſtitutions of this kind, money, as we have above obſerved, muſt be baniſhed. But in great ſocieties, the multiplicity, variety, embarraſſment, and importance of affairs, as well as the facility of purchaſing, and the ſlowneſs of exchange, require a common meaſure. In order to extend or ſupport our power, we muſt be poſſeſſed of the means to which, by the unanimous conſent of mankind, this power is annexed.

CHAP. VIII.

Explication of a Paradox of the Ancients, in reſpect to Manners.

THAT judicious writer, Polybius, informs us, that muſic was neceſſary to ſoften the manners of the Arcadians, who lived in a cold gloomy country; that the inhabitants of Cynete, who ſlighted muſic, were the cruelleſt of all the Greeks, and that no other town was ſo

* Such as were formerly the cities of Greece.

BOOK IV. Chap. 8.

immerſed in luxury and debauch. Plato is not afraid to affirm, that there is no poſſibility of making a change in muſic, without altering the frame of government. Ariſtotle, who ſeems to have written his politics, only in order to contradict Plato, agrees with him, notwithſtanding, in regard to the power and influence of muſic over the manners of the people. This was alſo the opinion of Theophraſtus, of Plutarch (d), and of all the ancients; an opinion grounded on mature reflection; being one of the principles of their polity *. Thus it was, they enacted laws, and thus they required that cities ſhould be governed.

(d) Life of Pelopidas.

This I fancy may be explained in the following manner. It is obſervable, that in the cities of Greece, eſpecially thoſe whoſe principal object was war, all lucrative arts and profeſſions were conſidered as unworthy of a freeman. *Moſt arts*, ſays Xenophon (e), *corrupt and enervate the bodies of thoſe that exerciſe them; they oblige them to ſit under a ſhade, or near the fire. They can find no leiſure, either for their friends, or for the republic.* It was only by the corruption of ſome democracies that artiſans became freemen. This we learn from Ariſtotle (f), who maintains, that a well-regulated republic will never give them the right and freedom of the city †.

(e) Book 5th of memorable ſayings.

(f) Polit. book 3. chap. 4.

* Plato, in his fourth book of laws, ſays, that the præfectures of muſic and gymnic exerciſes are the moſt important employments in the city; and in his Republic, Book III. Damon will tell you, ſays he, what ſounds are capable of corrupting the mind with baſe ſentiments, or of inſpiring the contrary virtues.

† Diophantes, ſays Ariſtotle, Polit. ch. 7. made a law formerly at Athens, that artiſans ſhould be ſlaves to the republic.

Agriculture

Agriculture was likewiſe a ſervile profeſſion, and generally practiſed by the inhabitants of conquered countries. Such as the *Helotes* among the Lacedæmonians, the *Periecians* among the Cretans, the *Penęſtes* among the Theſſalians, and other conquered * people in other republics.

In fine, every kind of low commerce † was infamous among the Greeks; as it obliged a citizen to ſerve and wait on a ſlave, on a lodger, or a ſtranger. This was a notion that claſhed with the ſpirit of Greek liberty; hence Plato (g) in his laws orders a citizen to be puniſhed if he attempted to concern himſelf with trade.

(g) Book 2.

Thus in the Greek republics the magiſtrates were extremely embarraſſed. They would not have the citizens apply themſelves to trade, to agriculture, or to the arts; and yet they would not have them idle (h). They found therefore employment for them in gymnic and military exerciſes; and none elſe were allowed by their inſtitution ‡. Hence the Greeks muſt be conſidered as a ſociety of wreſtlers and boxers. Now theſe exerciſes having a natural tendency to render people hardy and fierce, there was a neceſſity for tempering them with

(h) Ariſt. Polit. lib. 10.

* Plato likewiſe and Ariſtotle require ſlaves to till the land, *Laws, Book* V. *Polit. Book* VII. *c.* 10. True it is, that agriculture was not everywhere exerciſed by ſlaves: on the contrary, Ariſtotle obſerves, the beſt republics were thoſe in which the citizens themſelves tilled the land: but this was brought about by the corruption of the ancient governments, which were become democratical: for in earlier times the cities of Greece were ſubject to an ariſtocratic government.

† Cauponatio.

‡ Ars corporum exercendorum gymnaſtica, variis certaminibus terendorum pœdotribica. *Ariſtot.* Polit. l. 8. c. 5.

Book IV. Chap. 8.

others that might ſoften their manners *. For this purpoſe, muſic, which influences the mind by means of the corporeal organs, was extremely proper. It is a kind of a medium between manly exerciſes which harden the body, and ſpeculative ſciences which are apt to render us unſociable and ſour. It cannot be ſaid that muſic inſpired virtue, for this would be inconceivable: but it prevented the effects of a ſavage inſtitution, and enabled the ſoul to have ſuch a ſhare in the education, as it could never have had without the aſſiſtance of harmony.

Let us ſuppoſe among ourſelves a ſociety of men, ſo paſſionately fond of hunting, as to make it their ſole employment: they would doubtleſs contract thereby a kind of ruſticity and fierceneſs. But if they happened to imbibe a taſte for muſic, we ſhould quickly perceive a ſenſible difference in their cuſtoms and manners. In ſhort, the exerciſes uſed by the Greeks could raiſe only one kind of paſſions, viz. fierceneſs, indignation, and cruelty. But muſic excites all theſe; and is likewiſe able to inſpire the ſoul with a ſenſe of pity, lenity, tenderneſs, and love. Our moral writers, who declaim ſo vehemently againſt the ſtage, ſufficiently demonſtrate the power of muſic over the mind.

If the ſociety above-mentioned were to have no other muſic than that of drums, and the ſound of the trumpet, would it not be more difficult to accompliſh this end, than by the more melting tones

* Ariſtotle obſerves, that the children of the Lacedæmonians, who began theſe exerciſes at a very tender age, contracted from thence too great a ferocity and rudeneſs of behaviour. Polit. lib. 8. c. 4.

of

of ſofter harmony? the ancients were therefore in the right, when under particular circumſtances they preferred one mode to another in regard to manners.

But ſome will aſk, why ſhould muſic be pitched upon preferable to any other entertainment? It is becauſe of all ſenſible pleaſures, there is none that leſs corrupts the ſoul. We bluſh to read in Plutarch (i) that the Thebans, in order to ſoften the manners of their youth, authoriſed by law a paſſion, which ought to be proſcribed by all nations,

(i) Life of Pelopidas.

BOOK V.

That the Laws given by the Legiſlator ought to be relative to the Principle of Government.

CHAP. I.

Idea of this Book.

Book V. Chap. 1. and 2.

THAT the laws of education ought to be relative to the principle of each government, has been ſhewn in the preceding book. Now the ſame may be ſaid of thoſe which the legiſlator gives to the whole ſociety. The relation of laws to this principle, ſtrengthens the ſeveral ſprings of government; and this principle derives from thence, in its turn, a new degree of vigour. And thus it is in mechanics, that action is always followed by reaction.

Our deſign is to examine this relation in each government, beginning with the republican ſtate, whoſe principle is virtue.

CHAP. II.

What is meant by Virtue in a Political State.

VIRTUE in a republic, is a moſt ſimple thing; it is a love of the republic; it is a ſenſation, and not a conſequence of acquired knowledge: a ſenſation, that may be felt by the meaneſt as well as by the higheſt perſon in the ſtate. When the

the common people adopt good maxims, they adhere to them ſteadier than thoſe we call gentlemen. It is very rare that corruption commences with the former; nay they frequently derive from their imperfect light a ſtronger attachment to the eſtabliſhed laws and cuſtoms.

The love of our country is conducive to a purity of morals, and the latter is again conducive to the former. The leſs we are able to ſatisfy our private paſſions, the more we abandon ourſelves to thoſe of a general nature. How comes it that monks are ſo fond of their order? it is owing to the very cauſe that renders the order inſupportable. Their rule debars them of all thoſe things by which the ordinary paſſions are fed; there remains therefore only this paſſion for the very rule that torments them. The more auſtere it is, that is, the more it curbs their inclinations, the more force it gives to the only paſſion left them.

CHAP. III.

What is meant by a Love of the Republic in a Democracy.

A LOVE of the republic in a democracy, is a love of the democracy; as the latter is that of equality.

A love of the democracy is likewiſe that of frugality. Since every individual ought here to enjoy the ſame happineſs and the ſame advantages, they ſhould conſequently taſte the ſame pleaſures and form the ſame hopes; which cannot be expected but from a general frugality.

The

The love of equality in a democracy, limits ambition to the ſole deſire, to the ſole happineſs of doing greater ſervices to our contry than the reſt of our fellow citizens. They cannot all render her equal ſervices, but they ought all to ſerve her with equal alacrity. At our coming into the world, we contract an immenſe debt to our country, which we can never diſcharge.

Hence diſtinctions here ariſe from the principle of equality, even when it ſeems to be removed by ſignal ſervices, or ſuperior abilities.

The love of frugality limits the *deſire of having* to the ſtudy of procuring neceſſaries to our family, and ſuperfluities to our country. Riches give a power which a citizen cannot uſe for himſelf, for then he would be no longer equal. They likewiſe procure pleaſures which he ought not to enjoy, becauſe theſe would be alſo repugnant to the equality.

Thus well-regulated democracies, by eſtabliſhing domeſtic frugality, made way at the ſame time for public expences, as was the caſe at Rome and Athens, when magnificence and profuſion aroſe from the very fund of frugality. And as religion commands us to have pure and unſpotted hands when we make our offerings to the gods, the laws required a frugality of life to enable them to be liberal to our country.

The good ſenſe and happineſs of individuals depend greatly on the mediocrity of their abilities and fortunes. Therefore, as a republic, where the laws have placed many in a middling ſtation, is compoſed of wiſe men, it will be wiſely governed; as it is compoſed of happy men, it will be extremely happy.

CHAP.

CHAP. IV.

In what manner the Love of Equality and Frugality is inſpired.

THE love of equality and of a frugal œconomy is greatly excited by equality and frugality themſelves, in ſocieties, were both theſe virtues are eſtabliſhed by law.

In monarchies and deſpotic governments, no body aims at equality; this does not ſo much as enter their thoughts; they all aſpire to ſuperiority. People of the very loweſt condition deſire to emerge from their obſcurity, only to lord it over their fellow ſubjects.

It is the ſame with reſpect to frugality. To love it, we muſt practiſe and enjoy it. It is not thoſe who are enervated with pleaſure, that are fond of a frugal life; were this natural and common, Alcibiades would never have been the admiration of the univerſe. Neither is it thoſe who envy or admire the luxury of the great; people that have, preſent to their view none but rich men, or men miſerable like themſelves, deteſt their wretched condition, without loving or knowing the real term or point of miſery.

A true maxim it is therefore, that in order to love equality and frugality in a republic, theſe virtues muſt have been previouſly eſtabliſhed by law.

CHAP. V.

In what manner the Laws eſtabliſh Equality in a Democracy.

Book V. Chap. 5.

SOME ancient legiſlators, as Lycurgus and Romulus, made an equal diviſion of lands. A ſettlement of this kind can never take place but upon the foundation of a new republic; or when the old one is ſo corrupt, and the minds of the people are ſo diſpoſed, that the poor think themſelves obliged to demand, and the rich obliged to conſent to, a remedy of this nature.

If the legiſlator, in making a diviſion of this kind, does not enact laws at the ſame time to ſupport it, he forms only a temporary conſtitution; inequality will break in where the laws have not precluded it, and the republic will be utterly undone.

Hence, for the preſervation of this equality, it is abſolutely neceſſary there ſhould be ſome regulation in reſpect to womens dowries, donations, ſucceſſions, teſtamentary ſettlements, and all other forms of contracting. For were it once allowed to diſpoſe of our property to whom and how we pleaſed, the will of each individual would diſturb the order of the fundamental law.

Solon, by permitting the Athenians, upon failure of iſſue (k), to leave their eſtates to whom they pleaſed, acted contrary to the ancient laws, by which the eſtates were ordered to continue in the family of the teſtator (l); and even contrary to his own laws, for by aboliſhing debts, he had aimed at equality.

(k) Plutarch, life of Solon.

(l) Ibid.

The

The law which prohibited people's having two inheritances *, was extremely well adapted for a democracy. It derived its origin from the equal diſtribution of lands and portions made to each citizen. The law would not permit a ſingle man to poſſeſs more than a ſingle portion.

From the ſame ſource aroſe thoſe laws by which the next relation was ordered to marry the heireſs. This law was given to the Jews after the like diſtribution. Plato (m), who grounds his laws on this diviſion, made the ſame regulation, which had been received as a law by the Athenians.

(m) Republic. book 8.

At Athens there was a law, whoſe ſpirit, in my opinion, has not been hitherto rightly underſtood. It was lawful to marry a ſiſter only by the father's ſide, but it was not permitted to eſpouſe a ſiſter by the ſame venter †. This cuſtom was originally owing to republics, whoſe ſpirit would not permit, that two portions of land, and conſequently two inheritances, ſhould devolve on the ſame perſon. A man who married his ſiſter only by the father's ſide, could inherit but one eſtate, namely, that of his father: but by eſpouſing his ſiſter by the ſame venter, it might happen that this ſiſter's father, having no male iſſue, might leave her his eſtate, and conſequently the brother, who married her, might be poſſeſſed of two.

Little will it avail to object what Philo ſays ‡,

* *Philolaus* of Corinth made a law at Athens, that the number of the portions of land and that of inheritances ſhould be always the ſame. *Ariſt. Polit.* lib. 2. cap. 12.

† *Cornelius Nepos in præfat.* This cuſtom began in the earlieſt times. Thus Abraham ſays of Sarah, *ſhe is my ſiſter, my father's daughter, but not my mother's.* The ſame reaſons occaſioned the eſtabliſhing the ſame law among different nations.

‡ *De ſpecialibus legibus quæ pertinent ad præcepta Decalogi.*

Book V. Chap. 5.

that although the Athenians were allowed to marry a ſiſter by the father's ſide, and not by the mother's, yet the contrary practice prevailed among the Lacedæmonians, who were permitted to eſpouſe a ſiſter by the mother's ſide, and not by the father's. For I find in Strabo (a), that at Sparta, whenever a woman was married to her brother, ſhe had half his portion for her dowry. Plain it is, that this ſecond law was made, in order to prevent the bad conſequences of the former. That the eſtate belonging to the ſiſter's family might not devolve on the brother's, they gave half the brother's eſtate to the ſiſter for her dowry.

(a) Lib. 10.

Seneca *, ſpeaking of Silanus, who had married his ſiſter, ſays, that the permiſſion was limited at Athens, but general at Alexandria. In a monarchical government there was very little concern about any ſuch thing as a diviſion of eſtates.

Excellent was that law, which, in order to maintain this diviſion of lands in a democracy, ordained, that a father, who had ſeveral children, ſhould pitch upon one of them to inherit his portion (c), and leave the others to be adopted, to the end that the number of citizens might always be kept upon an equality with that of the diviſions.

(c) Plato has a law of this kind, lib. 3. leg.

Phaleas of Chalcedon (b) contrived a very extraordinary method of rendering all fortunes equal, in a republic where there was the greateſt inequality. This was, that the rich ſhould give fortunes with their daughters to the poor, but receive none themſelves; and that the poor ſhould

(b) Ariſtot. lib. 2. cap. 7.

* *Athenis dimidium licet, Alexandriæ totum.* Seneca *de morte Claudii.*

receive

receive money for their daughters, inſtead of giving them fortunes. But I do not remember that a regulation of this kind ever took place in any republic. It lays the citizens under ſuch hard and oppreſſive conditions, as would make them deteſt the very equality which they deſigned to eſtabliſh. It is proper ſometimes that the laws ſhould not ſeem to tend ſo directly to the end they propoſe.

Though real equality be the very ſoul of a democracy, it is ſo difficult to eſtabliſh, that an extreme exactneſs in this reſpect would not be always convenient. Sufficient it is to eſtabliſh a cenſus *, which ſhould reduce or fix the differences to a certain point: it is afterwards the buſineſs of particular laws to level as it were the inequalities, by the duties laid upon the rich, and by the eaſe afforded to the poor. It is moderate riches alone that can give or ſuffer this ſort of compenſations; for as to men of over-grown eſtates, every thing which does not contribute to advance their power and honour, is conſidered by them as an injury.

All inequality in democracies ought to be derived from the nature of the government, and even from the principle of equality. For example, it may be apprehended that people who are obliged to live by their labour, would be too much impoveriſhed by a public employment, or neglect the duties attending it; that artiſans would grow inſolent; and that too great a number of freedmen would overpower the ancient citizens. In this caſe

* Solon made four claſſes, the firſt, of thoſe who had an income of 500 minas either in corn or liquid fruits; the ſecond, of thoſe who had 300, and were able to keep a horſe; the third, of ſuch as had only 200; the fourth, of all thoſe who lived by their manual labour. *Plut.* Life of Solon.

BOOK V. Chap. 6.

the equality * in a democracy may be ſuppreſſed, for the good of the ſtate. But this is only an apparent equality: for a man ruined by a public employment would be in a worſe condition than his fellow citizens; and this ſame man being obliged to neglect his duty, would reduce the reſt to a worſe condition than himſelf; and ſo on.

CHAP. VI.

In what manner the Laws ought to maintain Frugality in a Democracy.

IT is not ſufficient in a well-regulated democracy, that the diviſions of land be equal; they ought alſo to be ſmall, as was cuſtomary among the Romans. "*God forbid*, ſaid Curius to his ſoldiers †, *that a citizen ſhould look upon that as a ſmall piece of land, which is ſufficient to maintain him.*"

As equality of fortunes ſupports frugality, ſo the latter maintains the former. Theſe things, though in themſelves different, are of ſuch a nature, as to be unable to ſubſiſt ſeparately; they reciprocally act upon each other; if one withdraws itſelf from a democracy, the other ſurely follows it.

True it is, that when a democracy is founded in commerce, private people may acquire vaſt riches without a corruption of morals. This is becauſe

* Solon excludes from public employments all thoſe of the fourth claſs.

† They inſiſted upon a larger diviſion of the conquered lands. *Plutarch*'s moral works, Lives of the ancient Kings and Commanders.

the

the ſpirit of commerce is naturally attended with that of frugality, œconomy, moderation, labour, prudence, tranquillity, order, and rule. So long as this ſpirit ſubſiſts, the riches it produces have no bad effect. The miſchief is, when exceſſive wealth deſtroys the ſpirit of commerce; then it is that the inconveniencies of inequality begin to be felt. BOOK V. Chap. 6.

In order to ſupport this ſpirit, commerce ſhould be carried on by the principal citizens; this ſhould be their ſole aim and ſtudy; this the chief object of the laws: and theſe very laws, by dividing the eſtates of individuals in proportion to the increaſe of commerce, ſhould ſet every poor citizen ſo far at his eaſe, as to be able to work like the reſt; and every wealthy citizen in ſuch a mediocrity, as to be obliged to take ſome pains either in preſerving or acquiring a fortune.

It is an excellent law in a trading republic, to make an equal diviſion of the paternal eſtate among the children. The conſequence of this is, that how great ſoever a fortune the father has made, his children, being not ſo rich as he, are induced to avoid luxury, and to work as he had done. I ſpeak here only of trading republics, for as to thoſe that have no commerce, the legiſlator muſt purſue quite different meaſures *.

In Greece there were two ſorts of republics: the one military, like Sparta; the other commercial, as Athens. In the former, the citizens were obliged to be idle; in the latter, endeavours were uſed to inſpire them with the love of induſtry and labour,

* In theſe the portions or fortunes of women ought to be very much limited.

Solon made idleneſs a crime, and inſiſted that each citizen ſhould give an account of his manner of getting a livelihood. And indeed, in a well-regulated democracy, where people's expences ſhould extend only to what is neceſſary, every one ought to have it; for how ſhould their wants be otherwiſe ſupplied?

CHAP. VII.

Other Methods of favouring the Principle of Democracy.

AN equal diviſion of lands cannot be eſtabliſhed in all democracies. There are ſome circumſtances in which a regulation of this nature would be impracticable, dangerous, and even ſubverſive of the conſtitution. We are not always obliged to proceed to extremes. If it appears that this diviſion of lands, which was deſigned to preſerve the people's morals, does not ſuit with the democracy, recourſe muſt be had to other methods.

If a permanent body be eſtabliſhed to ſerve as a rule and pattern of manners; a ſenate, to which years, virtue, gravity, and eminent ſervices procure admittance; the ſenators, by being expoſed to public view like the ſtatues of the Gods, muſt naturally inſpire every family with ſentiments of virtue.

Above all, this ſenate muſt ſteadily adhere to the ancient inſtitutions, and mind that the people and the magiſtates never ſwerve from them.

The preſervation of the ancient cuſtoms is a very conſiderable point in reſpect to manners. Since a corrupt people ſeldom perform any memorable actions,

actions, ſeldom eſtabliſh ſocieties, build cities, or enact laws; on the contrary, ſince moſt inſtitutions are derived from people whoſe manners are plain and ſimple; to keep up the ancient cuſtoms, is the way to preſerve the original purity of morals.

Beſides, if by ſome revolution the ſtate has happened to aſſume a new form, this ſeldom can be effected without infinite pains and labour, and hardly ever by idle and debauched perſons. Even thoſe who had been the inſtruments of the revolution, were deſirous it ſhould be reliſhed, which is difficult to compaſs without good laws. Hence it is, that ancient inſtitutions generally tend to reform the people's manners, and thoſe of modern date to corrupt them. In the courſe of a long adminiſtration, the deſcent to vice is inſenſible; but there is no re-aſcending to virtue, without making the moſt generous efforts.

It has been queſtioned, whether the members of the ſenate we are here ſpeaking of ought to be for life, or only choſen for a time. Doubtleſs they ought to be for life, as was the cuſtom at Rome*, at Sparta†, and even at Athens. For we muſt not confound the ſenate at Athens, which was a body that changed every three months, with the Areopagus, whoſe members, as ſtanding patterns, were eſtabliſhed for life.

* The magiſtrates there were annual, and the ſenators for life.

† Lycurgus, ſays Xenophon, *de Repub. Lacedæm.* ordained, that the ſenators ſhould be choſen from amongſt the old men, to the end that they might not be neglected in the decline of life; thus by making them judges of the courage of young people, he rendered the old age of the former more honourable than the ſtrength and vigour of the latter.

Book V. Chap. 7.

Let this be therefore a general maxim; that in a ſenate deſigned to be a rule, and the depoſitary, as it were, of manners, the members ought to be choſen for life: in a ſenate intended for the adminiſtration of affairs, the members may be changed.

The ſpirit, ſays Ariſtotle, waxes old as well as the body. This reflexion holds good only in regard to a ſingle magiſtrate, but cannot be applied to a ſenatorian aſſembly.

At Athens, beſide the Areopagus, there were guardians of the public morals, as well as of the laws †. At Sparta, all the old men were cenſors. At Rome, the cenſorſhip was committed to two particular magiſtrates. As the ſenate watched over the people, the cenſors were to have an eye over the people and the ſenate. Their office was to reform the corruptions of the republic, to ſtigmatize indolence, to cenſure neglects, and to correct miſtakes; as to flagrant crimes, theſe were left to the puniſhment of the laws.

That Roman law, which required the accuſations in caſes of adultery to be public, was admirably well calculated for preſerving the purity of morals; it intimidated married women, as well as thoſe who were to watch over their conduct.

Nothing contributes more to the preſervation of morals, than an extreme ſubordination of the young to the old. Thus they are both reſtrained, the former by their reſpect for thoſe of advanced age, and the latter by their regard for themſelves.

Nothing gives a greater force to the laws, than a perfect ſubordination between the citizens and the magiſtrate. *The great difference which Lycurgus eſta-*

* Even the Areopagus itſelf was ſubject to their cenſure.

bliſhed between Sparta and the other cities, ſays Xenophon (a), *conſiſts chiefly in the obedience the citizens ſhew to the laws; they run when the magiſtrate calls them. But at Athens a rich man would be highly diſpleaſed, to be thought dependent on the magiſtrate.*

(a) Republic of the Lacedæmonians.

Paternal authority is likewiſe of great uſe towards the preſervation of morals. We have already obſerved, that in a republic there is not ſo coercive a force as in other governments. The laws muſt therefore endeavour to ſupply this defect by ſome means or other; and this is done by paternal authority.

Fathers at Rome had the power of life and death over their children †. At Sparta, every father had a right to correct another man's child.

Paternal authority ended at Rome together with the republic. In monarchies, where ſuch a purity of morals is not required, they are controuled by no other authority than that of the magiſtrates.

The Roman laws, which accuſtomed young people to dependance, eſtabiſhed a long minority. Perhaps we are miſtaken in conforming to this cuſtom; there is no neceſſity for ſo much conſtraint in monarchies.

This very ſubordination in a republic might make it neceſſary for the father to continue in the poſſeſſion of his children's fortune during life, as was the cuſtom at Rome. But this is not agreeable to the ſpirit of monarchy.

† We may ſee in the Roman hiſtory, how uſeful this power was to the republic. I ſhall give an inſtance even in the time of its greateſt corruption. Aulus Fulvius was ſet out on his journey in order to join Catiline; his father called him back, and put him to death. Salluſt, *de bello Catil.*

CHAP. VIII.

In what manner the Laws ought to be relative to the Principle of Government in an Ariſtocracy.

Book V. Chap. 8.

IF the people are virtuous in an ariſtocracy, they enjoy very near the ſame happineſs as in a popular government, and the ſtate grows powerful. But as a great ſhare of virtue is very rare where mens fortunes are ſo unequal, the laws muſt tend as much as poſſible to infuſe a ſpirit of moderation, and endeavour to re-eſtabliſh that equality which was neceſſarily removed by the conſtitution.

The ſpirit of moderation is what we call virtue in an ariſtocracy; it ſupplies the place of the ſpirit of equality in a popular ſtate.

As the pomp and ſplendor with which kings are ſurrounded, form a part of their power, ſo modeſty and ſimplicity of manners conſtitute the ſtrength of an ariſtocratic nobility *. When they affect no diſtinction, when they mix with the people, dreſs like them, and with them ſhare all their pleaſures, the people are apt to forget their ſubjection and weakneſs.

Every government has its nature and principle. An ariſtocracy muſt not therefore aſſume the nature and principle of monarchy; which would be the caſe, were the nobles to be inveſted with perſonal privileges diſtinct from thoſe of their body;

* In our days the Venetians, who in many reſpects may be ſaid to have a very wiſe government, decided a diſpute between a noble Venetian and a gentleman of Terra Firma in reſpect to precedency in a church, by declaring, that out of Venice a noble Venetian had no pre-eminence over any other citizen.

privileges

privileges ought to be for the ſenate, and ſimple reſpect for the ſenators.

In ariſtocratical governments there are two principal ſources of diſorder: exceſſive inequality between the governors and the governed; and the ſame inequality between the different members of the body that governs. From theſe two inequalities, hatreds and jealouſies ariſe, which the laws ought ever to prevent or repreſs.

The firſt inequality is chiefly, when the privileges of the nobility are honorable, only as they are ignominious to the people. Such was the law at Rome by which the patricians were forbidden to marry plebeians *; a law that had no other effect, than to render the particians on the one ſide more haughty, and on the other more odious. The reader may ſee what advantages the tribunes derived from thence in their harangues.

This inequality occurs likewiſe, when the condition of the citizens differs with regard to taxes: which may happen four different ways; when the nobles aſſume the privilege of paying none; when they commit frauds to exempt themſelves †; when they engroſs the public money, under pretence of rewards or appointments for their reſpective employments; in fine, when they render the common people tributary, and divide among their own body the profits ariſing from the ſeveral ſubſidies. This laſt caſe is very rare; an ariſtocracy ſo inſtituted would be the moſt intolerable of all governments.

* It was inſerted by the decemvirs in the two laſt tables. See Dionyſ. Halicarn. l. 10.

† As in ſome ariſtocracies in our time; nothing is more prejudical to the government.

While

BOOK V. Chap. 8.

While Rome inclined towards ariſtocracy, ſhe avoided all theſe inconveniencies. The magiſtrates never received any emoluments from their office. The chief men of the republic were taxed like the reſt, nay heavier; and ſometimes the taxes fell upon them alone. In fine, far from ſharing among themſelves the revenues of the ſtate, all they could draw from the public treaſure, and all the wealth that fortune flung into their laps, they beſtowed freely on the people, to be excuſed from accepting public honors*.

It is a fundamental maxim, that largeſſes are pernicous to the people in a democracy, but ſalutary in an ariſtocratical government. The former make them forget they are citizens, the latter bring them to a ſenſe of it.

If the revenues of the ſtate are not diſtributed among the people, they muſt be convinced at leaſt of their being well adminiſtered: to feaſt their eyes with the public treaſure, is with them the ſame thing almoſt as enjoying it. The golden chain diſplayed at Venice, the riches exhibited at Rome in public triumphs, the treaſures preſerved in the temple of Saturn, were in reality the wealth of the people.

It is a very eſſential point in an ariſtocracy, that the nobles themſelves ſhould not levy the taxes. The firſt order of the ſtate in Rome never concerned themſelves with it; the levying of taxes was committed to the ſecond, and even this in proceſs of time was attended with great inconveniencies. In an ariſtocracy of this kind, where the nobles

* See in Strabo, l. 14. in what manner the Rhodians behaved in this reſpect.

levied

levied the taxes, the private people would be all at the diſcretion of perſons in public employments; and there would be no ſuch thing as a ſuperior tribunal to check their power. The members appointed to remove the abuſes, would rather enjoy them. The nobles would be like the princes of deſpotic governments, who confiſcate whatever eſtates they pleaſe.

Soon would the profits hence ariſing be conſidered as a patrimony, which avarice would enlarge at pleaſure. The farms would be lowered, and the public revenues reduced to nothing. This is the reaſon that ſome governments, without having ever received any remarkable ſhock, have dwindled away to ſuch a degree, as not only their neighbours, but even their own ſubjects, have been ſurprized at it.

The laws ſhould likewiſe forbid the nobles all kind of commerce: merchants of ſuch unbounded credit would monopolize all to themſelves. Commerce is a profeſſion of people who are upon an equality; hence among deſpotic ſtates the moſt miſerable are thoſe in which the prince applies himſelf to trade.

The laws of Venice debar * the nobles from commerce, by which they might even innocently acquire exorbitant wealth.

The laws ought to employ the moſt effectual means for making the nobles do juſtice to the people. If they have not eſtabliſhed a tribune, they ought to be a tribune themſelves.

* *Amelot de la Houſaye*, of the government of Venice, part 3. The *Claudian* law forbad the ſenators to have any ſhip at ſea, that held above forty buſhels. *Liv.* l. 21.

Every

Every ſort of aſylum in oppoſition to the execution of the laws deſtroys ariſtocracy, and is ſoon ſucceeded by tyranny.

They ought always to mortify the luſt of dominion. There ſhould be either a temporary or perpetual magiſtrate to keep the nobles in awe, as the Ephori at Sparta, and the State Inquiſitors at Venice, magiſtrates ſubject to no formalities. This ſort of government ſtands in need of the ſtrongeſt ſprings: thus a mouth of ſtone * is open to every informer at Venice, a mouth to which one would be apt to give the appellation of tyranny.

Theſe arbitrary magiſtrates in an ariſtocracy bear ſome analogy to the cenſorſhip in democracies, which of its own nature is equally independent. And, indeed, the cenſors ought to be ſubject to no inquiry in relation to their conduct during their office; they ſhould meet with a thorough confidence, and never be diſcouraged. In this reſpect the practice of the Romans deſerved admiration; magiſtrates of all denominations were accountable for their adminiſtration †, except the cenſors ‡.

There are two very pernicious things in an ariſtocracy; exceſs either of poverty, or of wealth, in the nobility. To prevent their poverty, it is neceſſary, above all things, to oblige them to pay

* The informers throw their ſcrolls into it.

† See *Livy*, l. 49. A cenſor could not be troubled even by a cenſor; each made his remark without taking the opinion of his collegue; and when it otherwiſe happened, the cenſorſhip was in a manner aboliſhed.

‡ At Athens the *Logiſtæ*, who made all the magiſtrates accountable for their conduct, gave no account themſelves.

their

their debts in time. To moderate the exceſs of wealth, prudent and gradual regulations ſhould be made; but no confiſcations, no agrarian laws, no expunging of debts; theſe are productive of infinite miſchief. BOOK V. Chap. 8.

The laws ought to aboliſh the right of primogeniture among the nobles *, to the end, that by a continual diviſion of the inheritances, their fortunes may be always upon a level.

There ſhould be no ſubſtitutions, no powers of redemption, no rights of *Majoraſgo*, or adoption. The contrivances for perpetuating the grandeur of families in monarchical governments, ought never to be employed in ariſtocracies.

When the laws have compaſſed the equality of families, the next thing is to preſerve a proper harmony and union amongſt them. The quarrels of the nobility ought to be quickly decided; otherwiſe the conteſts of individuals become thoſe of families. Arbiters may terminate, or even prevent the riſe of diſputes.

In fine, the laws muſt not favour the diſtinctions raiſed by vanity among families, under pretence that they are more noble or ancient than others; pretences of this nature ought to be ranked among the weakneſſes of private perſons.

We have only to caſt an eye on Sparta; there we may ſee how the Ephori contrived to check the foibles of the kings, as well as thoſe of the nobility and common people.

* It is ſo practiſed at Venice, *Amelot de la Houſſaye*, p. 30; and 31.

† The main deſign of ſome ariſtocracies ſeems to be leſs the ſupport of the ſtate than of their nobility.

CHAP.

CHAP. IX.

In what manner the Laws are relative to their Principle in Monarchies.

Book V. Chap. 9.

AS honor is the principle of a monarchical government, the laws ought to be relative to this principle.

They ſhould endeavour to ſupport the nobility, in reſpect to whom honor may be, in ſome meaſure, deemed both child and parent.

They ſhould render the nobility hereditary, not as a boundary between the power of the prince and the weakneſs of the people, but as the link which connects them both.

In this government, ſubſtitutions which preſerve the eſtates of families undivided, are extremely uſeful, though in others not ſo proper.

Here the power of redemption is of ſervice, as it reſtores to noble families the lands that had been alienated by the prodigality of a parent.

The lands of the nobility ought to have privileges as well as their perſons. The monarch's dignity is inſeparable from that of his kingdom; and the dignity of the nobleman from that of his fief.

All theſe privileges muſt be particular to the nobility, and incommunicable to the people, unleſs we intend to act contrary to the principle of government, and to diminiſh the power of the nobles together with that of the people.

Subſtitutions are a reſtraint to commerce; the power of redemption produces an infinite number of proceſſes; every eſtate in land that is ſold through-

throughout the kingdom, is in ſome meaſure without an owner for the ſpace of a year. Privileges annexed to fiefs give a power very burthenſome to thoſe governments which tolerate them. Theſe are the inconveniencies of nobility; inconveniencies however that vaniſh when confronted with its general utility: but when theſe privileges are communicated to the people, every principle of government is wantonly violated.

In monarchies a perſon may leave the bulk of his eſtate to one of his children; a permiſſion improper in any other government.

The laws ought to favour all kind of commerce * conſiſtent with the conſtitution, to the end that the ſubjects may, without ruining themſelves, be able to ſatisfy the continual cravings of the prince and his court.

They ſhould eſtabliſh ſome regulation, that the manner of collecting the taxes may not be more burthenſome than the taxes themſelves.

The weight of duties produces labor, labor wearineſs, and wearineſs the ſpirit of indolence.

CHAP. X.

Of the Expedition peculiar to the executive Power in Monarchies.

GREAT is the advantage which a monarchical government has over a republic: as the ſtate is conducted by a ſingle perſon, the executive power is thereby enabled to act with greater

* It is tolerated only in the common people. See the third law. Cod. *de Comm. & Mercatoribus*, which is full of good ſenſe.

expe-

BOOK V. Chap. 10.

expedition. But as this expedition may degenerate into rapidity, the laws ſhould uſe ſome contrivance to ſlacken it. They ought not only to favour the nature of each conſtitution, but likewiſe to remedy the abuſes that might reſult from this very nature.

(a) Teſtam. polit.

Cardinal Richelieu (a) adviſes monarchs to permit no ſuch thing as ſocieties or communities that raiſe difficulties upon every trifle. If this man's heart had not been bewitched with the love of deſpotic power, ſtill theſe arbitrary notions would have filled his head.

The bodies intruſted with the depoſitum of the laws, are never more obedient than when they proceed ſlowly, and uſe that reflexion in the prince's affairs, which can ſcarely be expected from the ignorance of a court, or from the precipitation of its councils *.

What would have become of the fineſt monarchy in the world, if the magiſtrates, by their delays, their complaints, and entreaties, had not checked the rapidity even of their princes virtues, when theſe monarchs, conſulting only the generous impulſe of their minds, would fain have given a boundleſs reward to ſervices performed with an unlimited courage and fidelity?

CHAP. XI.

Of the Excellence of a monarchical Government.

MONARCHY has a great advantage over a deſpotic government. As it naturally

* *Barbaris cunctatio ſervilis, ſtatim exequi regium videtur.* Tacit. Annal. l. 5.

turally requires there ſhould be ſeveral orders or ranks of ſubjects, the ſtate is more permanent, the conſtitution more ſteady, and the perſon of him who governs more ſecure.

Cicero (o) is of opinion, that the eſtabliſhing of the tribunes preſerved the republic. "*And indeed*, ſays he, *the violence of a headleſs people is more terrible. A chief or head is ſenſible that the affair depends upon himſelf, and therefore he thinks; but the people in their impetuoſity are ignorant of the danger into which they hurry themſelves.*" This reflexion may be applied to a deſpotic government, which is a people without tribunes; and to a monarchy, where the people have ſome ſort of tribunes. (o) Lib. 3. de Leg.

Accordingly it is obſervable, that in the commotions of a deſpotic government, the people, hurried away by their paſſions, are apt to puſh things as far as they can go. The diſorders they commit are all extreme; whereas in monarchies matters are ſeldom carried to exceſs. The chiefs are apprehenſive on their own account; they are afraid of being abandoned; and the intermediate dependent powers * do not chuſe that the populace ſhould have too much the upper hand. It rarely happens that the ſtates of the kingdom are intirely corrupted: the prince adheres to theſe; and the ſeditious, who have neither will nor hopes to ſubvert the government, have neither power nor will to dethrone the prince.

In theſe circumſtances men of prudence and authority interfere; moderate meaſures are firſt propoſed, then complied with, and things at length

* See the firſt note of book 2. ch. 4.

are redreſſed; the laws reſume their vigor, and command ſubmiſſion.

Thus all our hiſtories are full of civil wars without revolutions, while the hiſtories of deſpotic governments abound with revolutions without civil wars.

The writers of the hiſtory of the civil wars of ſome countries, even thoſe who fomented them, ſufficiently demonſtrate the little foundation princes have to ſuſpect the authority, with which they inveſt particular bodies of men; ſince, even under the unhappy circumſtance of their errors, they ſighed only after the laws and their duty; and reſtrained, more than they were capable of inflaming, the impetuoſity of the revolted (P).

(P) Memoirs of Cardinal de Retz and other hiſtories.

Cardinal Richelieu, reflecting perhaps that he had too much reduced the ſtates of the kingdom, has recourſe to the virtues of the prince and of his miniſters for the ſupport (Q) of government: but he requires ſo many things, that indeed there is none but an angel capable of ſuch attention, ſuch reſolution, and knowledge; and ſcarce can we flatter ourſelves ever to ſee ſuch a prince and miniſters, no not while monarchy ſubſiſts.

(Q) Teſtam. polit.

As people, who live under a good government, are happier than thoſe, who without rule or leaders wander about the foreſts; ſo monarchs, who live under the fundamental laws of their country, are far happier than deſpotic princes, who have nothing to regulate either their own paſſions, or thoſe of their ſubjects.

CHAP.

CHAP. XII.

The ſame Subject continued.

LET us not look for magnanimity in deſpotic governments; the prince cannot impart a greatneſs which he has not himſelf: with him there is no ſuch thing as glory. Book V. Chap. 12, 13, and 14.

It is in monarchies we behold the ſubjects encircling the throne, and cheered by the irradiancy of the Sovereign; there it is that each perſon filling, as it were, a larger ſpace, is capable of exerciſing thoſe virtues which adorn the ſoul, not with independence, but with true dignity and greatneſs.

CHAP. XIII.

An Idea of deſpotic Power.

WHEN the ſavages of Louiſiana are deſirous of fruit, they cut the tree to the root, and gather the fruit (r). This is an emblem of deſpotic government.

(r) Edifying letters, 11. coll. p. 315.

CHAP. XIV.

In what manner the Laws are relative to the Principles of deſpotic Government.

THE principle of deſpotic government is fear; but a timid, ignorant, and faint-ſpirited people have no occaſion for a great number of laws.

Every thing ought to depend here on two or three ideas; hence there is no neceſſity that any new notions ſhould be added. When we want to break a horſe, we take care not to let him change

his maſter, his leſſon, or his pace. Thus an impreſſion is made on his brain by two or three motions, and no more.

If a prince is ſhut up in a ſeraglio, he cannot leave his voluptuous abode without alarming thoſe who keep him confined. They will bear that his perſon and power ſhould paſs into other hands. He ſeldom therefore wages war in perſon, and hardly ventures to intruſt the command to his generals.

A prince of this ſtamp, unaccuſtomed to reſiſtance in his palace, is enraged to ſee his will oppoſed by armed force; hence he is generally governed by wrath or vengeance. Beſides, he can have no notion of true glory. War therefore is carried on under ſuch a government in its full natural fury, and leſs extent is given to the law of nations than in other ſtates.

Such a prince has ſo many imperfections, that they are afraid to expoſe his natural ſtupidity to public view. He is concealed in his palace, and the people are ignorant of his ſituation. It is lucky for him, that the inhabitants of thoſe countries need only the name of a prince to govern them.

When Charles XII. was at Bender, he met with ſome oppoſition from the ſenate of Sweden; upon which he wrote word home, that he would ſend one of his boots to command them. This boot would have governed like a deſpotic prince.

If the prince is a priſoner, he is ſuppoſed to be dead, and another mounts the throne. The treaties made by the priſoner are void, his ſucceſſor will not ratify them: and indeed, as he is the law, the ſtate, and the prince; when he is no longer a prince,

prince, he is nothing: were he not therefore deemed to be deceaſed, the ſtate would be ſubverted.

One thing which chiefly determined the Turks to conclude a ſeparate peace with Peter I. was the Muſcovites telling the Vizir, that in Sweden another prince had been ſet upon the throne (a).

(a) Continuation of Puffendorf's introduction to the hiſtory of Europe, in the article of Sweden, ch. 10.

The preſervation of the ſtate is only the preſervation of the prince, or rather of the palace where he is confined. Whatever does not directly menace this palace or the capital, makes no impreſſion on ignorant, proud, and prejudiced minds; and as for the concatenation of events, they are unable to trace, to foreſee, or even to conceive it. Politics, with its ſeveral ſprings and laws, muſt here be very much limited; the political government is as ſimple as the civil *.

The whole is reduced to reconciling the political and civil adminiſtration to the domeſtic government, the officers of ſtate to thoſe of the ſeraglio.

Such a ſtate is happieſt, when it can look upon itſelf as the only one in the world, when it is environed with deſerts, and ſeparated from thoſe people whom they call Barbarians. Since it cannot depend on the militia, it is proper it ſhould deſtroy a part of itſelf.

As fear is the principle of deſpotic government, its end is tranquillity: but this tranquillity cannot be called a peace; no, it is only the ſilence of thoſe towns which the enemy is ready to invade.

Since the ſtrength does not lie in the ſtate, but in the army that founded it; in order to defend the ſtate, the army muſt be preſerved, how formidable

* According to Sir John Chardin, there is no council of ſtate in Perſia.

ſoever to the prince. How then can we reconcile the ſecurity of the government, to that of the prince's perſon?

Obſerve how induſtriouſly the Ruſſian government endeavours to temper its arbitrary power, which it finds more burthenſome than the people themſelves. They have broke their numerous guards, mitigated criminal puniſhments, erected tribunals, entered into a knowledge of the laws, and inſtructed the people. But there are particular cauſes that will probably once more involve them in the very miſery which they now endeavour to avoid.

In thoſe ſtates, religion has more influence than any where elſe; it is fear added to fear. In Mahometan countries, it is partly from their religion that the people derive the ſurprizing veneration they have for their prince.

It is religion that amends in ſome meaſure the Turkiſh conſtitution. The ſubjects, who have no attachment of honor to the glory and grandeur of the ſtate, are connected with it by the force and principle of religion.

Of all deſpotic governments, there is none that labours more under its own weight, than that wherein the prince declares himſelf proprietor of all the lands, and heir to all his ſubjects. Hence the neglect of agriculture ariſes; and if the prince intermeddles likewiſe in trade, all manner of induſtry is ruined.

Under this ſort of government, nothing is repaired or improved (t). Houſes are built only for the neceſſity of habitation; there is no digging of ditches, or planting of trees; every thing is drawn from, but nothing reſtored to the earth; the

(t) See Ricaut, State of the Ottoman Empire, p. 196.

the ground lies untilled, and the whole country becomes a defert.

Is it to be imagined, that the laws which aboliſh the property of land, and the ſucceſſion of eſtates, will diminiſh the avarice and cupidity of the great? By no means. They will rather ſtimulate this cupidity and avarice. The great men will be prompted to uſe a thouſand oppreſſive methods, imagining they have no other property than the gold and ſilver which they are able to ſeize upon by violence, or to conceal.

To prevent therefore the utter ruin of the ſtate, the avidity of the prince ought to be moderated by ſome eſtabliſhed cuſtom. Thus, in Turky, the ſovereign is ſatisfied with the right of three per cent. on the value of inheritances (u). But as he gives the greateſt part of the lands to his ſoldiery, and diſpoſes of them as he pleaſes; as he ſeizes on all the inheritances of the officers of the empire at their deceaſe; as he has the property of the poſſeſſions of thoſe who die without iſſue, and the daughters have only the uſufruct; it thence follows, that the greateſt part of the eſtates of the country are held in a precarious manner.

(u) See concerning the inheritances of the Turks, *Ancient and modern Sparta*. See alſo Ricaut on the Ottoman empire.

By the laws of *Bantam* *, the king ſeizes on the whole inheritance, even wife, children and habitation. In order to elude the cruelleſt part of this law, they are obliged to marry their children at eight, nine, or ten years of age, and ſometimes younger, to the end that they may not be a wretched part of the father's ſucceſſion.

* Collection of Voyages that contributed to the eſtabliſhment of the Eaſt-India company, tom. 1. The law of *Pegu* is leſs cruel; if there happens to be children, the king ſucceeds only to two-thirds. Ibid. tom. 3. p. 1.

BOOK V. Chap. 14.

In countries where there are no fundamental laws, the ſucceſſion to the empire cannot be fixt. The crown is then elective, and the right of electing is in the prince, who names a ſucceſſor either of his own or of ſome other family. In vain would it be to eſtabliſh here the ſucceſſion of the eldeſt ſon; the prince might always chuſe another. The ſucceſſor is declared by the prince himſelf, or by a civil war. Hence a deſpotic ſtate is, upon another account, more liable than a monarchical government to diſſolution.

As every prince of the royal family is held equally capable of being choſen, hence it follows, that the prince who aſcends the throne, immediately ſtrangles his brothers, as in Turky; or puts out their eyes, as in Perſia; or bereaves them of their underſtanding, as in the Mogul's country; or if theſe precautions are not uſed, as in Morocco, the vacancy of the throne is always attended with the horrors of a civil war.

(x) See the different conſtitutions, eſpecially that of 1722.

By the conſtitutions of Ruſſia (x), the Czar may chuſe whom he has a mind for his ſucceſſor, whether of his own or of a ſtrange family. Such a ſettlement produces a thouſand revolutions, and renders the throne as tottering as the ſucceſſion is arbitrary. The right of ſucceſſion being one of thoſe things which are of moſt importance to the people to know, the beſt is that which moſt ſenſibly ſtrikes them, ſuch as a certain order of birth. A ſettlement of this kind puts a ſtop to intrigues, and ſtifles ambition; the mind of a weak prince is no longer enſlaved, nor is he made to ſpeak his will as he is juſt expiring.

When the ſucceſſion is eſtabliſhed by a fundamental law, only one prince is the ſucceſſor, and his brothers have neither a real nor apparent right to diſpute

diſpute the crown with him. They can neither pretend to, nor take any advantage of the will of a father. There is then no more occaſion to confine or kill the king's brother, than any other ſubject.

But in deſpotic governments, where the prince's brothers are equally his ſlaves and his rivals, prudence requires that their perſons be ſecured; eſpecially in Mahometan countries, where religion conſiders victory or ſucceſs as a divine deciſion in their favour; ſo that they have no ſuch thing as a monarch *de jure*, but only *de facto*.

There is far a greater incentive to ambition in countries, where the princes of the blood are ſenſible, that if they do not aſcend the throne, they muſt be either impriſoned or put to death, than amongſt us, where they are placed in ſuch a ſtation, as may ſatisfy, if not their ambition, at leaſt their moderate deſires.

The princes of deſpotic governments have ever perverted the uſe of marriage. They generally take a great many wives, eſpecially in that part of the world where abſolute power is in ſome meaſure naturalized, namely, Aſia. Hence they come to have ſuch a multitude of children, that they can hardly have any great affection for them, nor the children for one another.

The reigning family reſembles the ſtate; it is too weak itſelf, and its head too powerful; it ſeems very numerous and extenſive, and yet is ſuddenly extinct. *Artaxerxes* (y) put all his children to death for conſpiring againſt him. It is not at all probable that fifty children ſhould conſpire againſt their father, and much leſs that this conſpiracy ſhould be owing to his having refuſed to reſign his concubine

(y) See Juſtin.

Book V. Chap. 14.

cubine to his eldeſt ſon. It is more natural to believe, that the whole was an intent of thoſe oriental ſeraglioes, where fraud, treachery and deceit reign in ſilence and darkneſs; and where an old prince, grown every day more infirm, is the firſt priſoner of the palace.

After what has been ſaid, one would imagine that human nature ſhould perpetually riſe up againſt deſpotiſm. But notwithſtanding the love of liberty, ſo natural to mankind, notwithſtanding their innate deteſtation of force and violence, moſt nations are ſubject to this very government. This is eaſily accounted for. To form a moderate government, it is neceſſary to combine the ſeveral powers; to regulate, temper, and ſet them in motion; to give, as it were, ballaſt to one, in order to enable it to counterpoiſe the other. This is a maſter-piece of legiſlation, rarely produced by hazard, and ſeldom attained by prudence. On the contrary, a deſpotic government offers itſelf, as it were, at firſt ſight; it is uniform throughout; and as paſſions only are requiſite to eſtabliſh it, this is what every capacity may reach.

CHAP. XV.

The ſame Subject continued.

IN warm climates, where deſpotic power generally prevails, the paſſions diſcloſe themſelves earlier, and are ſooner extinguiſhed (z); the underſtanding is ſooner ripened; they are leſs in danger of ſquandering away their fortunes; there is leſs facility of diſtinguiſhing themſelves in the world; leſs communication between young people, who are confined

(z) See the book of laws, as relative to the nature of the climate.

at

at home; they marry much earlier, and consequently may be sooner of age, than in our European climates. In Turky they are of age at fifteen (a).

They have no such thing as a cession of goods; in a government where there is no fixed property, people depend rather on the person than on his estate.

The cession of goods is naturally admitted in moderate governments*, but especially in republics, because of the greater confidence usually placed in the probity of the citizens, and the lenity and moderation arising from a form of government, which every subject seems to have preferred to all others.

Had the legislators of the Roman republic established the cession of goods†, they never would have been exposed to so many seditions and civil discords; neither would they have experienced the danger of the evils, nor the inconveniency of the remedies.

Poverty and the precariousness of property in a despotic state render usury natural, each person raising the value of his money in proportion to the danger he sees in lending it. Misery therefore pours in from all parts into those unhappy countries; they are bereft of every thing, even of the resource of borrowing.

Hence it is, that a merchant under this government is unable to carry on an extensive commerce; he lives from hand to mouth; and were he to en-

(a) *Lagullettiere*, ancient and modern Sparta, p. 463.

* The same may be said of compositions in regard to fair bankrupts.

† There was no such establishment made, till the Julian law, *De cessione bonorum*; which preserved them from prison, and from an ignominious division of their goods.

cumber

cumber himself with a large quantity of merchandises, he would lose more by the exorbitant interest he must give for money, than he could possibly get by the goods. Hence they have no laws here relating to commerce, they are all reduced to what is called the bare police.

A government cannot be unjust, without having hands to exercise its injustice. Now it is impossible but these hands will be grasping for themselves. The embezzling of the public money is therefore natural in despotic states.

As this is a common crime under such a government, confiscations are very useful. By these the people are eased; the money drawn by this method being a considerable tribute, which could hardly be raised on the exhausted subject: neither is there in those countries any one family which the prince would be glad to preserve.

In moderate governments it is quite a different thing. Confiscations would render property uncertain, would strip innocent children, would destroy a whole family, instead of punishing a single criminal. In republics they would be attended with the mischief of subverting equality, which is the very soul of this government, by depriving a citizen of his necessary subsistence.

(b) Authentica bona damnatorum. *Cod. de bon. damn.*

There is a Roman law (b) against confiscations, except in the case of *Crimen majestatis*, or high treason of the most heinous nature. It would be a prudent thing to follow the spirit of this law, and to limit confiscations to particular crimes. In countries where a local custom has rendered real estates

* They seem to have been too fond of confiscations in the republic of Athens.

alien-

alienable, Bodin very juſtly obſerves, that confiſcations ſhould extend only to ſuch as are purchaſed or acquired (c). Book V. Chap. 16.

(c) Book 5. ch. 3.

CHAP. XVI.

Of the Communication of Power.

IN a deſpotic government the power is communicated entire to the perſon intruſted with it. The vizir himſelf is the deſpotic prince; and each particular officer is the vizir. In monarchies the power is leſs immediately applied; being tempered by the monarch as he gives it. He makes ſuch a diſtribution of his authority, as never to communicate a part of it, without reſerving a greater ſhare to himſelf.

Hence in monarchies the governors of towns are not ſo dependent on the governor of the province, as not to be ſtill more ſo on the prince; and the private officers of military bodies are not ſo far ſubject to their general, as not to owe ſtill a greater ſubjection to their ſovereign.

In moſt monarchies, it has been wiſely regulated, that thoſe who have an extenſive command, ſhould not belong to any military corps; ſo that as they have no authority but through the prince's pleaſure, and as they may be employed or not, they are in ſome meaſure in the ſervice, and in ſome meaſure out of it.

This is incompatible with a deſpotic government. For if thoſe who are not actually employed, were ſtill inveſted with privileges and titles, the conſequence muſt be, that there would be a kind of

* Ut eſſe Phœbi dulcius lumen ſolet
Jamjam cadentis——————

men

men in the ſtate, who might be ſaid to be great of themſelves; a thing directly oppoſite to the nature of this government.

Were the governor of a town independent of the baſhaw, expedients would be daily neceſſary to make them agree; which is highly abſurd in a deſpotic ſtate. Beſides, if a particular governor might refuſe to obey, how could the other anſwer for his province with his head?

In this kind of government, authority muſt ever be wavering; nor is that of the loweſt magiſtrate more ſteady than that of the deſpotic prince. Under moderate governments, the law is prudent in all its parts, and perfectly well known, ſo that even the pettieſt magiſtrates are capable of following it. But in a deſpotic ſtate, where the prince's will is the law, though the prince were wiſe, yet how could the magiſtrate follow a will he does not know? He muſt certainly follow his own.

Again, as the law is only the prince's will, and as the prince can only will what he knows, the conſequence is, that there are an infinite number of people who muſt will for him, and make their wills keep pace with his.

In fine, as the law is the momentary will of the prince, it is neceſſary that thoſe who will for him, ſhould follow his ſubitaneous manner of willing.

CHAP. XVII.

Of Preſents.

IT is a received cuſtom in deſpotic countries, never to addreſs any ſuperior whomſoever, not excepting their kings, without making them a preſent.

ſent. The Mogul (d) never receives the petitions of his ſubjects, if they come with empty hands. Theſe princes ſpoil even their own favours.

(d) Collection of Voyages that contributed to the eſtabliſhment of the Eaſt-India company, tom. 1. p. 80.

But thus it muſt ever be in a government where no man is a citizen; where they have all a notion that a ſuperior is under no obligation to an inferior; where men imagine themſelves bound by no other tie than the chaſtiſements inflicted by one party over another; where, in fine, there is very little to do, and where the people have ſeldom an occaſion of preſenting themſelves before the great, of offering their petitions, and much leſs their complaints.

In a republic, preſents are odious, becauſe virtue ſtands in no need of them. In monarchies, honor is a much ſtronger incentive than preſents. But in a deſpotic government, where there is neither honor nor virtue, people cannot be determined to act but through hope of the conveniencies of life.

It is in conformity to republican ideas, that Plato (e) ordered thoſe who received preſents for doing their duty, to be puniſhed with death. *They muſt not take preſents*, ſays he, *neither for good nor for evil actions.*

(e) Book 12. of Laws.

A very bad law that was among the Romans (f), which gave the magiſtrates leave to accept of ſmall preſents *, provided they did not exceed one hundred crowns the whole year. They who receive nothing, expect nothing; they who receive a little, ſoon covet more, till at length their deſires ſwell to an exorbitant height. Beſides, it is much eaſier to convict a man, who

(f) Leg. 5. § ad leg. Jul. repet.

* Munuſcula.

knows

knows himſelf obliged to accept of no preſent at all, and yet will accept of ſomething, than a perſon who takes more when he ought to take leſs, and who always finds pretexts, excuſes, and plauſible reaſons, in juſtification of his conduct.

CHAP. XVIII.

Of Rewards conferred by the Sovereign.

IN deſpotic governments, where, as we have already obſerved, the principal motive of action is the hope of the conveniencies of life, the prince who confers rewards, has nothing to beſtow but money. In monarchies, where honor alone predominates, the prince's rewards would conſiſt only of marks of diſtinction, if the diſtinctions eſtabliſhed by honor were not attended with luxury, which neceſſarily brings on its wants: the prince therefore is obliged to confer ſuch honors as lead to wealth. But in a republic where virtue reigns, a motive ſelf-ſufficient, and which excludes all others, the recompences of the ſtate conſiſt only of public atteſtations of this virtue.

It is a general rule, that great rewards in monarchies and republics, are a ſign of their decline; becauſe they are a proof of their principles being corrupted, and that the idea of honor has no longer the ſame force in monarchy, nor the title of citizen the ſame weight in a republic.

The very worſt Roman emperors, were thoſe who were moſt profuſe in their largeſſes, for example, *Caligula*, *Claudius*, *Nero*, *Otho*, *Vitellius*, *Commodus*, *Heliogabalus*, and *Caracalla*. The beſt, as *Auguſtus*

Auguſtus, *Veſpaſian*, *Antoninus Pius*, *Marcus Aurelius*, and *Pertinax*, were œconomiſts. Under good emperors the ſtate reſumed its principles; all other treaſures were ſupplied by that of honor.

CHAP. XIX.

New Conſequences of the Principles of the three Governments.

I CANNOT conclude this book without making ſome applications of my three priciples.

It is a queſtion, whether the laws ought to oblige a ſubject to accept of a public employment. My opinion is, that they ought in a republic, but not in a monarchical government. In the former, public employments are atteſtations of virtue, depoſitums with which a citizen is intruſted by his country, for whoſe ſake alone he ought to live, to act, and to think; conſequently he cannot refuſe them *. In the latter, public offices are teſtimonies of honor; now ſuch is the capriciouſneſs of honor, that it chuſes to accept of none of theſe teſtimonies, but when and in what manner it pleaſes. I. Queſtion.

The late king of Sardinia inflicted puniſhments † on his ſubjects who refuſed the dignities and public offices of the ſtate. In this he unknowingly followed republican ideas: but his manner of governing in other reſpects ſufficiently proves that this was not his intention.

* Plato, in his Republic, book 8. ranks theſe refuſals among the marks of the corruption of a republic. In his laws, book 6. he orders them to be puniſhed by a fine; at Venice they are puniſhed with baniſhment.

† Victor Amadeus.

BOOK V. Chap. 19. II. Queſtion.

Secondly, it is queſtioned whether a ſubject ſhould be obliged to accept of a poſt in the army inferior to that which he held before? Among the Romans it was uſual to ſee a captain ſerve the next year under his lieutenant *. This is becauſe virtue in republics requires a continual ſacrifice of our perſons and of our repugnancies for the good of the ſtate. But in monarchies, honor, true or falſe, will never bear with what it calls degrading itſelf.

In deſpotic governments, where honor, poſts and ranks are equally abuſed, they indiſcriminately make of a prince a ſcullion, and of a ſcullion a prince.

III. Queſtion.

Thirdly, it may be enquired, whether civil and military employments ſhould be conferred on the ſame perſon? In republics, I think, they ſhould be joined, but in monarchies ſeparated. In the former, it would be extremely dangerous to make the profeſſion of arms a particular ſtate, diſtinct from that of civil functions; and in the latter, no leſs dangerous would it be to confer theſe two employments on the ſame perſon.

In republics, a perſon takes up arms only with a view to defend his country and its laws; it is becauſe he is a citizen he makes himſelf for a while a ſoldier. Were theſe two diſtinct ſtates, the perſon who under arms thinks himſelf a citizen, would ſoon be made ſenſible he is only a ſoldier.

In monarchies, they whoſe condition engages them in the profeſſion of arms, have nothing but glory, or

* Some centurions having appealed to the people for the employments which they had before enjoyed, *it is juſt, my comrades*, ſaid a centurion, *that you ſhould look upon every poſt as honorable, in which you have an opportunity of defending the republic.* Livy, Dec. 5. lib. 42.

at

at leaſt honor or fortune, in view. To men there- BOOK V. Chap. 19.
fore like theſe the prince ſhould never give any civil employments; on the contrary, they ought to be checked by the civil magiſtrate, that the ſame perſons may not have at the ſame time the confidence of the people and the power to abuſe it *.

We have only to caſt an eye on a nation that may be juſtly called a republic, diſguiſed under the form of monarchy, and we ſhall ſee how jealous they are of making a ſeparate order of the profeſſion of arms, and how the military ſtate is conſtantly allied with that of the citizen, and even ſometimes of the magiſtrate, to the end that theſe qualities may be a pledge for their country, which ſhould never be forgotten.

The diviſion of civil and military employments, made by the Romans after the extinction of the republic, was not an arbitrary thing. It was a conſequence of the change which happened in the conſtitution of Rome; it was natural to a monarchical government; and what was only commenced under Auguſtus †, ſucceeding emperors ‡ were obliged to finiſh, in order to temper the military government.

Procopius therefore, the competitor of Valens the emperor, was very much to blame, when conferring the proconſular dignity ‖ upon Hormiſdas, a prince of the blood royal of Perſia, he re-

* Ne imperium ad optimos nobilium transferretur, Senatum militia vetuit Gallienus, etiam adire exercitum. *Aurelius Victor*, de viris illuſtribus.

† Auguſtus deprived the ſenators, proconſuls, and governors of the privilege of wearing arms. Dio, l. 33.

‡ Conſtantine. See Zozimus, lib. 2.

‖ Ammianus Marcellinus, lib. 26. *More veterum & bella reſtaro.*

Book V. Chap. 19.

ſtored to this magiſtracy the military command of which it had been formerly poſſeſſed; unleſs indeed he had very particular reaſons for ſo doing. A perſon that aſpires to the ſovereignty, concerns himſelf leſs about what is ſerviceable to the ſtate, than what is likely to promote his own intereſt.

IV. Queſtion.

Fourthly, it is a queſtion, whether public employments ſhould be ſold? They ought not, I think, in deſpotic governments, where the ſubjects muſt be inſtantaneouſly placed or diſplaced by the prince.

But in monarchies this cuſtom is not at all improper, by reaſon it is an inducement to engage in that as a family employment, which would not be undertaken through a motive of virtue; it fixes likewiſe every one to his duty, and renders the ſeveral orders of the kingdom more permanent. Suidas (g) very juſtly obſerves, that Anaſtaſius had changed the empire into a kind of ariſtocracy, by ſelling all public employments.

(g) Fragments. taken from the embaſſies of Conſtantine Porphyrogenitus.

Plato (h) cannot bear with this proſtitution: "*This is exactly*, ſays he, *as if a perſon were to be made a mariner or pilot of a ſhip for his money. Is it poſſible that this rule ſhould be bad in every other employment of life, and hold good only in the adminiſtration of a republic?*" But Plato ſpeaks of a republic founded on virtue, and we of a monarchy. Now in monarchies (where, though there were no ſuch thing as a regular ſale of public offices, ſtill the indigence and avidity of the courtier would equally prompt him to expoſe them to ſale) chance will furniſh better ſubjects than the prince's choice. In ſhort, the method of attaining

(h) Repub. lib. 8.

attaining to honors through riches, inſpires and cheriſhes induſtry *, a thing extremely wanting in this kind of government. BOOK V. Chap. 19.

The fifth queſtion is, in what kind of government Cenſors are neceſſary? My anſwer is, that they are neceſſary in a republic, where the principle of government is virtue. We muſt not imagine that criminal actions only are deſtructive of virtue; it is deſtroyed alſo by omiſſions, by neglects, by a certain coolneſs in the love of our country, by bad examples, and by the ſeeds of corruption: whatever does not openly violate, but elude the laws; does not ſubvert, but weaken them; ought to fall under the enquiry and correction of the Cenſors. V. Queſtion.

We are ſurprized at the puniſhment of the Areopagite, for killing a ſparrow, which, to eſcape the purſuit of a hawk, had taken ſhelter in his boſom. Surprized we are, alſo, that an Areopagite ſhould put his ſon to death for pulling out the eyes of a little bird. But let us reflect, that the queſtion here does not relate to a criminal ſentence, but to a judgment concerning manners in a republic founded on manners.

In monarchies there ſhould be no Cenſors; the former are founded on honor, and the nature of honor is to have the whole world for its Cenſor. Every man who fails in this article, is ſubject to the reproaches even of thoſe who are void of honor.

Here the Cenſors would be ſpoilt by the very

* We ſee the lazineſs of Spain, where all public employments are given away.

BOOK V. Chap. 19.

people whom they ought to correct: they could not prevail againſt the corruption of a monarchy; the corruption rather would be too ſtrong againſt them.

Hence it is obvious, that there ought to be no Cenſors in deſpotic governments. The example of China ſeems to derogate from this rule; but we ſhall ſee, in the courſe of this work, the particular reaſons of that inſtitution.

BOOK VI.

Conſequences of the Principles of different Governments with reſpect to the Simplicity of civil and criminal Laws, the Form of Judgments, and the inflicting of Puniſhments.

CHAP. I.

Of the Simplicity of civil Laws in different Governments.

MONARCHIES do not permit of ſo great a ſimplicity of laws as deſpotic governments. For in monarchies there muſt be courts of judicature; theſe muſt give their deciſions; the deciſions muſt be preſerved and learnt, that we may judge in the ſame manner to-day as yeſterday, and that the lives and property of the citizens may be as certain and fixt as the very conſtitution of the ſtate.

In monarchies, the adminiſtration of juſtice, which decides not only in whatever belongs to life and property, but likewiſe to honor, demands very ſcrupulous enquiries. The delicacy of the judge increaſes in proportion to the increaſe of his truſt, and of the importance of the intereſts on which he determines.

We muſt not therefore be ſurprized to find ſo many rules, reſtrictions, and extenſions in the laws of thoſe countries; rules that multiply the particular caſes, and ſeem to make of reaſon itſelf an art.

The difference of rank, birth and condition, eſtabliſhed in monarchical governments, is frequently attended with diſtinctions in the nature of property; and the laws relative to the conſtitution of this government, may augment the number of theſe diſtinctions. Hence among us, goods are divided into real eſtates, purchaſes, dowries, paraphernalia, paternal and maternal inheritances; moveables of different kinds; eſtates held in fee ſimple, or in tail; acquired by deſcent or conveyance; allodial, or held by ſoccage; ground rents, or annuities. Each ſort of goods is ſubject to particular rules, which muſt be complied with in the diſpoſal of them. Theſe things muſt needs diminiſh the ſimplicity of the laws.

In our governments, the fiefs are become hereditary. It was neceſſary that the nobility ſhould have a fixt property, that is, the fief ſhould have a certain conſiſteney, to the end that the proprietor might be always in a capacity of ſerving the prince. This muſt have been productive of great varieties; for inſtance, there are countries where fiefs could not be divided among the brothers; in others, the younger brothers may be allowed a more generous ſubſiſtence.

The monarch who knows each of his provinces, may eſtabliſh different laws, or tolerate different cuſtoms. But as the deſpotic prince knows nothing, and can attend to nothing, he muſt take general meaſures, and govern by a rigid and inflexible will, which throughout his whole dominions produces the ſame effect; in ſhort, every thing bends under his feet.

In proportion as the deciſions of the courts of judicature are multiplied in monarchies, the law is loaded with decrees that ſometimes contradict one another; either becauſe ſucceeding judges are of a different way of thinking, or becauſe the ſame cauſes are ſometimes well, and at other times ill defended; or, in fine, by reaſon of an infinite number of abuſes, to which all human regulations are liable. This is a neceſſary evil, which the legiſlator redreſſes from time to time, as contrary even to the ſpirit of moderate governments. For when people are obliged to have recourſe to courts of judicature, this ſhould come from the nature of the conſtitution, and not from the contradiction or uncertainty of the law.

In governments where there are neceſſary diſtinctions of perſons, there muſt likewiſe be privileges. This alſo diminiſhes the ſimplicity, and creates a thouſand exceptions.

One of the privileges leaſt burthenſome to ſociety, and eſpecially to him who confers it, is that of pleading in one court preferably to another. Here new difficulties ariſe, when it becomes a queſtion before which court we ſhall plead.

Far different is the caſe of people under deſpotic governments. In thoſe countries I can ſee nothing that the legiſlator is able to decree, or the magiſtrate to judge. As the lands belong to the prince, it follows, that there are ſcarce any civil laws in regard to landed property. From the right the ſovereign has to ſucceſſions, it follows likewiſe that there are none relating to inheritances. The monopolies eſtabliſhed by the prince for himſelf in ſome countries, render all ſorts of commercial laws

laws quite uſeleſs. The marriages which they uſually contract with female ſlaves, are the cauſe that there are ſcarce any civil laws relating to dowries, or to the particular advantage of married women. From the prodigious multitude of ſlaves it follows, likewiſe, that there are very few who have any ſuch thing as a will of their own, and of courſe are anſwerable for their conduct before a judge. Moſt moral actions, that are only in conſequence of a father's, a huſband's, or a maſter's will, are regulated by them, and not by the magiſtrates.

I forgot to obſerve, that as what we call honor, is a thing hardly known in thoſe countries, the ſeveral difficulties relating to this article, though of ſuch importance with us, are with them quite out of the queſtion. Deſpotic power is ſelf-ſufficient; round it there is an abſolute vacuum. Hence it is, that when travellers favour us with the deſcription of countries where arbitrary ſway prevails, they ſeldom make mention of civil laws *.

All occaſions therefore of wrangling and law-ſuits are here removed. And to this in part it is owing that litigious people in thoſe countries are ſo roughly handled: as the injuſtice of their demand is neither ſcreened, palliated nor protected by an infinite number of laws, of courſe it is immediately diſcovered.

* In *Mazulipatan* it could never be found out that there was ſuch a thing as a written law. *See the Collection of voyages that contributed to the eſtabliſhment of the India company*, Tom. IV. Part I. p. 391. The Indians are regulated in their deciſions by certain cuſtoms. The Vedan and ſuch like books do not contain civil laws, but religious precepts. See *Lettres ed.* 14. collect.

CHAP.

CHAP. II.

Of the Simplicity of criminal Laws *in different Governments.*

WE hear it generally ſaid, that juſtice ought to be adminiſtered with us as in Turky. Is it poſſible then that the moſt ignorant of all nations ſhould be the moſt clear ſighted in a point which it moſt behoves mankind to know?

If we examine the ſet forms of juſtice with reſpect to the trouble the ſubject undergoes in recovering his property, or in obtaining ſatisfaction for an injury or affront, we ſhall find them doubtleſs too numerous: but if we conſider them in the relation they bear to the liberty and ſecurity of every individual, we ſhall often find them too few; and be convinced that the trouble, expence, delays, and even the very dangers of our judiciary proceedings, are the price that each ſubject pays for his liberty.

In Turky, where little regard is ſhewn to the honor, life, or eſtate of the ſubject, all cauſes are ſpeedily decided. The method of determining them is a matter of indifference, provided they be determined. The baſhaw, after a quick hearing, orders which party he pleaſes to be baſtinadoed, and then ſends them about their buſineſs.

Here it would be dangerous to be of a litigious diſpoſition; this ſuppoſes a ſtrong deſire of obtaining juſtice, a ſettled averſion, an active mind, and a ſteadineſs in purſuing one's point. All this ſhould be avoided in a government, where fear ought to be the only prevailing ſentiment,

ment, and in which popular diſturbances are frequently attended with ſudden and unforeſeen revolutions. Here every man ought to know that the magiſtrate muſt not hear his name mentioned, and that his ſecurity depends intirely on his being reduced to a kind of annihilation.

But in moderate governments, where the life of the meaneſt ſubject is deemed precious, no man is ſtript of his honor or property but after a long enquiry; and no man is bereft of life, till his very country has attacked him, an attack that is never made without leaving him all poſſible means of making his defence.

Hence it is, that when a perſon renders himſelf abſolute *, he immediately thinks of reducing the number of laws. In a government thus conſtituted, they are more affected with particular inconveniencies, than with the liberty of the ſubject, which is very little minded.

In republics it is plain, that as many formalties at leaſt are neceſſary as in monarchies. In both governments they increaſe in proportion to the value which is ſet on the honor, fortune, liberty and life of the ſubject.

In republican governments, men are all equal; equal they are alſo in deſpotic governments: in the former, becauſe they are every thing; in the latter, becauſe they are nothing.

* Cæſar, Cromwell, and many others.

CHAP.

CHAP. III.

In what Governments and in what Caſes the Judges ought to determine according to the expreſs Letter of the Law.

THE nearer a goverment approaches towards a republic, the more the manner of judging becomes ſettled and fixt; hence it was a fault in the republic of Sparta, for the Ephori to paſs ſuch arbitrary judgments, without having any laws to direct them. The firſt conſuls at Rome pronounced ſentence in the ſame manner as the Ephori; but the inconveniency of this proceeding was ſoon felt, and they were obliged to have recourſe to expreſs and determinate laws.

In deſpotic governments there are no laws; the judge himſelf is his own rule. There are laws in monarchies; and where theſe are explicit, the judge conforms to them; where they are otherwiſe, he endeavours to inveſtigate their ſpirit. In republics, the very nature of the conſtitution requires the judges to follow the letter of the law: otherwiſe the law might be explained to the prejudice of every citizen, in caſes where their honor, property or life are concerned.

At Rome the judges had no more to do than to declare, that the perſon accuſed was guilty of a particular crime, and then the puniſhment was found in the laws, as may be ſeen in divers laws ſtill extant. In England the jury give their verdict whether the fact brought under their cognizance be proved or not; if it be proved, the judge pronounces the puniſhment inflicted by the law, and for this he need only to open his eyes.

CHAP.

CHAP. IV.

Of the manner of paſſing Judgment.

Book VI. Chap. 4.

HENCE ariſe the different manners of paſſing judgment. In monarchies the judges chuſe the method of arbitration; they deliberate together, they communicate their ſentiments for the ſake of unanimity; they moderate their opinions, in order to render them conformable to thoſe of others; and the leſſer number are obliged to give way to the majority. But this is not agreeable to the nature of a republic. At Rome, and in the cities of Greece, the judges never entered into a conſultation; each gave his opinion one of theſe three ways, *I abſolve, I condemn, it does not appear clear to me**: this was becauſe the people judged, or were ſuppoſed to judge. But the people are far from being civilians; all theſe reſtrictions and methods of arbitration are above their reach; they muſt have only one object, and one ſingle fact ſet before them; and then they have only to ſee whether they ought to condemn, to acquit, or to ſuſpend their judgment.

The Romans introduced ſet forms of actions †, after the example of the Greeks, and eſtabliſhed a rule, that each cauſe ſhould be directed by its proper action. This was neceſſary in their manner of judging; it was neceſſary to fix the ſtate of the queſtion, that the people might have it always before their eyes. Otherwiſe, in a long proceſs,

* *Non liquet.*

† *Quas actiones ne populus prout vellet inſtitueret, certas ſolemneſque eſſe voluerunt.* Lib. 2. § 6. Digeſt. de Orig. Jur.

this ſtate of the queſtion would continually change, and be no longer diſtinguiſhed. BOOK VI. Chap. 5.

Hence it followed, that the Roman judges granted only the ſimple demand, without making any addition, deduction, or limitation. But the *prætors* deviſed other forms of actions, which were called *ex bona fide*, where the method of pronouncing ſentence was left to the diſpoſition of the judge. This was more agreeable to the ſpirit of monarchy. Hence it is a ſaying among the French lawyers, *that in France * all actions are* EX BONA FIDE.

CHAP. V.

In what Governments the Sovereign may be Judge.

MACHIAVEL (a) attributes the loſs of the liberty of Florence, to the people's not judging in a body in caſes of high treaſon againſt themſelves, as was cuſtomary at Rome. For this purpoſe they had eight judges: *but the few*, ſays Machiavel, *are corrupted by a few.* I ſhould willingly adopt the maxim of this great man. But as in thoſe caſes the political intereſt prevails in ſome meaſure over the civil (for it is always an inconveniency that the people ſhould be judges in their own cauſe), in order to remedy this evil, the laws muſt provide as much as poſſible for the ſecurity of individuals.

(a) Diſcourſe on the firſt Decade of Livy, book 1. chap. 7.

With this view the Roman legiſlators did two things; they gave the perſons accuſed permiſſion to baniſh themſelves † before ſentence was pro-

* In France a perſon, though ſued for more than he owes, loſes his coſts, if he has not offered to pay the exact debt.

† This is well explained in Cicero's oration *pro Cæcina*, towards the end.

nounced;

nounced *; and they ordained, that the goods of those who were condemned, should be sacred, to prevent their being confiscated to the people. We shall see in the XIth book, the other limitations that were set to the judicatory power residing in the people.

Solon knew how to prevent the abuse which the people might make of their power in criminal judgments. He ordained, that the court of Areopagus should re-examine the affair; that if they believed the party accused was unjustly acquitted (b), they should impeach him again before the people; that if they believed him unjustly condemned (c), they should prevent the execution of the sentence, and make them rejudge the proceeding. An admirable law, that subjected the people to the censure of the magistracy which they most revered, and even to their own!

(b) Demosthenes pro corona, p. 494, edit. Frankf. an. 1604.

(c) See Philostratus's lives of the Sophists, book 1. Life of Æschines.

In affairs of this kind, it is always proper to throw in some delays, especially when the party accused is under confinement; to the end that the people may grow calm, and give their judgment cooly.

In despotic governments, the prince himself may be judge. But in monarchies this cannot be; the constitution by such means would be subverted, and the dependent intermediate powers annihilated; all set forms of judgment would cease; fear would take possession of the people's minds, and paleness spread itself over every countenance: the more confidence, honour, affection, and security in the subject, the more extended is the power of the monarch.

We shall give here a few more reflections on this point. In monarchies, the prince is the party that

* This was a law at Athens, as appears by Demosthenes. Socrates refused to make use of it.

prosecutes

profecutes the perſon accuſed, and cauſes him to be puniſhed or acquitted; now were he himſelf to ſit upon the trial, he would be both judge and party.

In this government the prince has frequently the benefit of confiſcation; ſo that here again, by determining criminal cauſes, he would be both judge and party.

Farther, by this method he would deprive himſelf of the moſt glorious attribute of ſovereignty, namely, that of granting pardon *; for it would be quite ridiculous of him to make and unmake his deciſions: ſurely he would not chuſe to contradict himſelf.

Beſides, this would be confounding all ideas; it would be impoſſible to tell whether a man was acquitted, or received his pardon.

Lewis XIII. being deſirous to ſit in judgment upon the trial of the duke *de la Valette* †, ſent for ſome members of the parliament, and of the privy-council, to debate the matter: upon their being ordered by the king to give their opinion concerning the warrant for his arreſt, the preſident *de Believre* ſaid, "That he found it very "ſtrange a prince ſhould paſs ſentence upon a "ſubject; that kings had reſerved to themſelves "the power of pardoning, and left that of con-"demning to their officers; that his majeſty want-"ed to ſee before him at the bar a perſon, who "by his deciſion was to be hurried away into the "other world! That the prince's countenance

* Plato does not think it right that kings, who, as he ſays, are prieſts, ſhould preſide on trials where people are condemned to death, to exile, or impriſonment.

† See the relation of the trial of the duke de la Valette. It is printed in the Memoirs of *Montreſor*, tom. 2. p. 62.

Book VI. Chap. 5.

" ſhould inſpire with hopes, and not confound with " fears; that his preſence alone removed eccleſiaſtic " cenſures; and that ſubjects ought not to go away " diſſatisfied from the ſovereign." When ſentence was paſſed, the ſame magiſtrate declared, " This is " an unprecedented judgment, to ſee, contrary to " the example of paſt ages, a king of France, in " the quality of a judge, condemning a gentle- " man to death (d)."

(d) It was afterwards revoked. See the ſame relation.

Again, ſentences paſſed by the prince would be an inexhauſtible ſource of injuſtice and abuſe; the courtiers by their importunity would always be able to extort his deciſions. Some Roman emperors were ſo mad as to ſit as judges themſelves; the conſequence was, that no reigns ever ſo ſurprized the world with oppreſſion and injuſtice.

(e) Annal. lib. 11.

" *Claudius*, ſays Tacitus (e), *having appropriated* " *to himſelf the determination of law-ſuits, and the* " *function of magiſtrates, gave occaſion to all manner* " *of rapine.*" But Nero, upon coming to the empire after Claudius, endeavoured to conciliate the minds of the people, by declaring, " That he would " take care not to be judge himſelf in private " cauſes, that the parties might not be expoſed " within the walls of a palace to the iniquitous " influence of a few freedmen (f)."

(f) Ibid. lib. 13.

(g) Hiſt. lib. 5.

" *Under the reign of Arcadius*, ſays Zozimus (g), " *a ſwarm of calumniators ſpread themſelves on* " *every ſide, and infected the court. Upon a per-* " *ſon's deceaſe, it was immediately ſuppoſed he had* " *left no children*; and, in conſequence of this, his* " *property was given away by a reſcript. For as* " *the prince was ſurprizingly ſtupid, and the empreſs*

* The ſame diſorder happened under Theodoſius the younger.

" *exceſſively*

" *exceſſively enterprizing, ſhe was a ſlave to the inſa-* BOOK
" *tiable avarice of her domeſtics and confidents; in-* VI.
" *ſomuch, that to an honeſt man nothing could be more* Chap. 5.
" *deſirable than death.*"

" *Formerly*, ſays Procopius (h), *there uſed to be* (h) Secret
" *very few people at court; but in Juſtinian's reign,* Hiſtory.
" *as the judges had no longer the liberty of adminiſter-*
" *ing juſtice, their tribunals were deſerted, while the*
" *prince's palace reſounded with the litigious clamours*
" *of the ſeveral parties.*" Every body knows what a proſtitution there was of public judgments, and even of the very laws themſelves, at that emperor's court.

The laws are the eye of the prince; by them he ſees what would otherwiſe eſcape his obſervation. Should he attempt the function of a judge, he would not then labour for himſelf, but for impoſtors, whoſe aim is to deceive him.

CHAP. VI.

That in Monarchies the Miniſters ought not to ſit as Judges.

IT is likewiſe a very great inconveniency in monarchies, for the miniſters of the prince to ſit as judges. We have ſtill inſtances of ſtates where there are a great number of judges to decide exchequer cauſes, and where the miniſters nevertheleſs (a thing almoſt incredible!) would fain determine them. Many are the reflections that here ariſe; but this ſingle one will ſuffice for my purpoſe.

There is in the very nature of things a kind of contraſt between a prince's council and his courts of judicature. The king's council ought to be com-

BOOK VI. Chap. 7. and 8.

posed of a few persons, and the courts of judicature of a great many. The reason is, in the former, things should be undertaken and conducted with a kind of warmth and passion, which can hardly be expected, but from four or five men who make it their sole business. On the contrary, in courts of judicature a certain coolness is requisite, and an indifference, in some measure, to all manner of affairs.

CHAP. VII.

Of a single Magistrate.

A Magistracy of this kind cannot take place but in a despotic government. We have an instance in the Roman history how far a single magistrate may abuse his power. Might it not be very well expected that *Appius* on his tribunal should contemn all laws, after having violated that of his own (l) enacting? Livy has given us the iniquitous distinction of the Decemvir. He had suborned a man to reclaim *Virginia* in his presence as his slave; Virginia's relations insisted, that by virtue of his own law she should be consigned to them, till the definitive judgment was passed. Upon which he declared, that his law had been enacted only in favour of the father; and that as Virginius was absent, no application could be made of it to the present case (k).

(l) See the 2d law. § 24. ff. *de Orig. Jur.*

(k) Quod paterpuellæ abesset, locum injuriæ esse ratus. Livius, Dec. 1. lib. 3.

CHAP. VIII.

Of Accusation in different Governments.

AT Rome * it was lawful for one citizen to accuse another; this was agreeable to the

* And in a great many other cities.

spirit

ſpirit of a republic, where each citizen ought to have an unlimited zeal for the public good, and is ſuppoſed to hold all the rights of his country in his own hands. Under the emperors, the republican maxims were ſtill purſued; and inſtantly appeared a pernicious tribe, a ſwarm of informers. Crafty, wicked men, who could ſtoop to any indignity, to ſerve the purpoſes of their ambition, were ſure to buſy themſelves in the ſearch of criminals, whoſe condemnation might be agreeable to the prince: this was the road to honor and preferment *; but luckily we are ſtrangers to it in our country.

We have at preſent an admirable law, namely, that by which the prince, who is eſtabliſhed for the execution of the laws, appoints an officer in each court of judicature to proſecute all ſorts of crimes in his name: hence the profeſſion of informers is a thing unknown to us; for if this public avenger were ſuſpected to abuſe his office, he would ſoon be obliged to mention his author.

By Plato's laws (l), thoſe who neglect to inform or to aſſiſt the magiſtrates, are liable to puniſhment. This would not be ſo proper in our days. The public proſecutor watches for the ſafety of the citizens; he proceeds in his office, while they enjoy their quiet and eaſe.

(l) Lib. 9.

* See in Tacitus the rewards given to thoſe informers.

CHAP. IX.

Of the Severity of Puniſhments in different Governments.

Book VI. Chap. 9.

THE ſeverity of puniſhments is fitter for deſpotic governments, whoſe principle is terror, than for a monarchy or a republic, whoſe ſpring is honor and virtue.

In moderate governments, the love of one's country, ſhame, and the fear of blame, are reſtraining motives, capable of preventing a multitude of crimes. Here the greateſt puniſhment of a bad action is conviction. The civil laws have therefore a ſofter way of correcting, and do not require ſo much force and ſeverity.

In thoſe ſtates a good legiſlator is leſs bent upon puniſhing, than preventing crimes; he is more attentive to inſpire good morals, than to inflict penalties.

It is a conſtant remark of the Chineſe authors *, that the more the penal laws were increaſed in their empire, the nearer they drew towards a revolution. This is becauſe puniſhments were augmented in proportion as the public morals were corrupted.

It would be an eaſy matter to prove, that in all, or almoſt all the governments of Europe, penalties have increaſed or diminiſhed in proportion as thoſe governments favoured or diſcouraged liberty.

* I ſhall ſhew hereafter that China is, in this reſpect, in the ſame caſe as a republic or a monarchy.

In

In deſpotic governments, people are ſo unhappy, as to have a greater dread of death than regret for the loſs of life; conſequently their puniſhments ought to be more ſevere. In moderate ſtates, they are more afraid of loſing their lives than apprehenſive of the pain of dying; thoſe puniſhments therefore which deprive them ſimply of life, are ſufficient.

Men in exceſs of happineſs or miſery are equally inclinable to ſeverity; witneſs conquerors and monks. It is mediocrity alone, and a mixture of proſperous and adverſe fortune, that inſpire us with lenity and pity.

What we ſee practiſed by individuals, is equally obſervable in regard to nations. In countries inhabited by ſavages, who lead a very hard life, and in deſpotic governments, where there is only one perſon on whom fortune laviſhes her favours, while the miſerable ſubjects lie expoſed to her inſults, people are equally cruel. Lenity reigns in moderate governments.

When in reading hiſtory, we obſerve the cruelty of the ſultans in the adminiſtration of juſtice, we ſhudder at the very thought of the miſeries of human nature.

In moderate governments, a good legiſlator may make uſe of every thing by way of puniſhment. Is it not very extraordinary, that one of the chief penalties at Sparta was to deprive a perſon of the power of lending out his wife, or of receiving the wife of another man, and to oblige him to have no company at home but virgins? In ſhort, whatever the law calls a puniſhment, is ſuch effectively.

CHAP. X.

Of the ancient French Laws.

BOOK VI. Chap. 10. and 11.

IN the ancient French laws we find the true ſpirit of monarchy. In caſes relating to pecuniary mulcts, the common people are leſs ſeverely puniſhed than the nobility *. But in criminal † caſes it is quite the reverſe; the nobleman loſes his honor and his voice in court, while the peaſant, who has no honor to loſe, undergoes a corporal puniſhment.

CHAP. XI.

That when a People are virtuous, few Puniſhments are neceſſary.

THE people of Rome had ſome ſhare of probity. Such was the force of this probity, that the legiſlator had frequently no farther occaſion than to point out the right road, and they were ſure to follow it; one would imagine, that inſtead of precepts, it was ſufficient to give them counſels.

The puniſhments of the regal laws, and thoſe of the twelve tables, were almoſt all aboliſhed in the time of the republic, in conſequence either of the *Valerian* ‡, or

* Suppoſe, for inſtance, to prevent the execution of a decree, the common people paid a fine of forty ſous, and the nobility of ſixty livres. *Somme Rurale*, book 2. p. 198. edit. Got. of the year 1512.

† See the Council of *Peter Defontaines*, chap. 13. eſpecially the 22d art.

‡ It was made by *Valerius Publicola* ſoon after the expulſion of the kings, and was twice renewed, both times by magiſtrates of

or of the *Porcian* law †. It was never obſerved that this ſtep did any manner of prejudice to the civil adminiſtration. BOOK VI. Chap. 12.

This Valerian law, which reſtrained the magiſtrates from uſing violent methods againſt a citizen that had appealed to the people, inflicted no other puniſhment on the perſon who infringed it, than that of being reputed a diſhoneſt man (m).

(m) *Nihil ultra quàm improbè factum adjecit.* Liv.

CHAP. XII.

Of the Power of Puniſhments.

EXPERIENCE ſhews, that in countries remarkable for the lenity of their laws, the ſpirit of the inhabitants is as much affected by ſlight penalties, as in other countries by ſeverer puniſhments.

If an inconveniency or abuſe ariſes in the ſtate, a violent government endeavours ſuddenly to redreſs it; and inſtead of putting the old laws in execution, it eſtabliſhes ſome cruel puniſhment, which inſtantly puts a ſtop to the evil. But the ſpring of government hereby loſes its elaſticity; the imagination grows accuſtomed to the ſevere as well as to the milder puniſhment; and as the fear of the latter diminiſhes, they are ſoon obliged in every caſe to have recourſe to the former. Robberies on the high-way were grown common in ſome countries; in order to remedy this evil, they invented the puniſhment of breaking upon the

of the ſame family, as Livy obſerves, lib. 10. the queſtion was not to give it a greater force, but to render its injunctions more perfect. *Diligentius ſanctum*, ſays Livy, ibid.

† *Lex Porcia pro tergo civium lata.* It was made in the 454th year of the foundation of Rome.

wheel,

Book VI. Chap. 12.

wheel, the terror of which put a ſtop for a while to this miſchievous practice. But ſoon after robberies on the high-ways became as common as ever.

Deſertion in our days was grown to a very great height; in conſequence of which it was judged proper to puniſh thoſe delinquents with death; and yet their number did not diminiſh. The reaſon is very natural; a ſoldier, accuſtomed to venture his life, deſpiſes, or affects to deſpiſe, the danger of loſing it. He is habituated to the fear of ſhame; it would have been therefore much better to have continued a puniſhment *, which branded him with infamy for life: the penalty was pretended to be increaſed, while it really diminiſhed.

Mankind muſt not be governed with too much ſeverity; we ought to make a prudent uſe of the means which nature has given us to conduct them. If we enquire into the cauſe of all human corruptions, we ſhall find that they proceed from the impunity of criminals, and not from the moderation of puniſhments.

Let us follow nature, who has given ſhame to man for his ſcourge; and let the heavieſt part of the puniſhment be the infamy attending it.

But if there be ſome countries where ſhame is not a conſequence of puniſhment, this muſt be owing to tyranny, which has inflicted the ſame penalties on villains and honeſt men.

And if there are others where men are deterred only by cruel puniſhments, we may be ſure that this muſt, in a great meaſure, ariſe from the violence of the government, which has uſed ſuch penalties for ſlight tranſgreſſions.

* They ſlit his noſe, or cut off his ears.

It

It often happens that a legiſlator, deſirous of remedying an abuſe, thinks of nothing elſe; his eyes are open only to this object, and ſhut to its inconveniencies. When the abuſe is redreſſed, you ſee only the ſeverity of the legiſlator; yet there remains an evil in the ſtate that has ſprung from this ſeverity; the minds of the people are corrupted, and become habituated to deſpotiſm.

Lyſander (a) having obtained a victory over the Athenians, the priſoners were ordered to be tried, in conſequence of an accuſation brought againſt that nation of having thrown all the captives of two galleys down a precipice, and of having reſolved in full aſſembly to cut off the hands of thoſe whom they ſhould chance to make priſoners. The Athenians were therefore all maſſacred, except *Adymantes*, who had oppoſed this decree. *Lyſander* reproached *Philocles*, before he was put to death, with having depraved the people's minds, and given leſſons of cruelty to all Greece.

(a) Xenoph. hiſt. lib. 3.

"*The Argives*, ſays Plutarch (b), *having put fifteen hundred of their citizens to death, the Athenians ordered ſacrifices of expiation, that it might pleaſe the Gods to turn the hearts of the Athenians from ſo cruel a thought.*"

(b) Morals, *of thoſe who are intruſted with the direction of ſtate affairs.*

There are two ſorts of corruption; one when the people do not obſerve the laws; the other when they are corrupted by the laws: an incurable evil, becauſe it is in the very remedy itſelf.

CHAP.

CHAP. XIII.

Insufficiency of the Laws of Japan.

BOOK VI. Chap. 13.

EXCESSIVE punishments may even corrupt a despotic government; of this we have an instance in Japan.

Here almost all crimes are punished with death (p), because disobedience to so great an emperor, as that of Japan, is reckoned an enormous crime. The question is not so much to correct the delinquent, as to vindicate the authority of the prince. These notions are derived from servitude, and are owing especially to this, that as the emperor is universal proprietor, almost all crimes are directly against his interests.

(p) See *Kempfer.*

They punish with death lies spoken before the magistrate (q); a proceeding contrary to natural defence.

(q) Collection of Voyages that contributed to the establishment of the East-India Company. Tom. 3. p. 428.

Even things which have not the appearance of a crime, are severely punished; for instance, a man that ventures his money at play is put to death.

True it is, that the character of this people, so amazingly obstinate, capricious, and resolute, as to defy all dangers and calamities, seems to absolve their legislators from the imputation of cruelty, notwithstanding the severity of their laws. But are men, who have a natural contempt of death, and who rip open their bellies for the least fancy; are such men, I say, mended or deterred, or rather are they not hardened, by the continual prospect of punishments?

The relations of travellers inform us, with respect to the education of the Japanese, that children must be treated there with mildness, because they

they become hardened to punishment; that their slaves must not be too roughly used, because they immediately stand upon their defence. Would not one imagine, that they might easily have judged of the spirit, which ought to reign in their political and civil government, from that which should prevail in their domestic concerns?

A wise legislator would have endeavoured to reclaim people by a just temperature of punishments and rewards; by maxims of philosophy, morality, and religion, adapted to those characters; by a proper application of the rules of honor, and by the enjoyment of ease and tranquillity of life. And should he have entertained any apprehension that their minds, being inured to the cruelty of punishments, would no longer be restrained by those of a milder nature, he would have conducted himself * in another manner, and gained his point by degrees: in particular cases, that admitted of any indulgence, he would have mitigated the punishment, till he should have been able to extend this mitigation to all cases.

But these are springs to which despotic power is a stranger; it may abuse itself, and that is all it can do: in Japan it has made its utmost effort, and has surpassed even itself in cruelty.

As the minds of the people grew wild and intractable, they were obliged to have recourse to the most horrid severity.

This is the origin, this the spirit of the laws of Japan. They had more fury however than force.

* Let this be observed as a maxim in practice, with regard to cases where the minds of people have been depraved by too great a severity of punishments.

They

Book VI. Chap. 13.

They ſucceeded in the extirpation of Chriſtianity; but ſuch unaccountable efforts are a proof of their inſufficiency. They wanted to eſtabliſh a good polity, and they have ſhewn greater marks of their weakneſs.

We have only to read the relation of the interview betweeen the Emperor and the Deyro at *Meaco* (r). The number of thoſe who were ſuffocated or murdered in that city by ruffians, is incredible; young maids and boys were carried off by force, and found afterwards expoſed in public places, at unſeaſonable hours, quite naked, and ſown in linen bags, to prevent their knowing which way they had paſſed; robberies were committed in all parts; the bellies of horſes were ripped open, to bring their riders to the ground; and coaches were overturned, in order to ſtrip the ladies. The Dutch, who were told they could not paſs the night on the ſcaffolds, without expoſing themſelves to the danger of being aſſaſſinated, came down, &c.

(r) Collection of Voyages that contributed to the eſtabliſhment of the Eaſt-India Company. Tom. 5. p. 2.

I ſhall here give one inſtance more from the ſame nation. The Emperor having abandoned himſelf to infamous pleaſures, lived unmarried, and was conſequently in danger of dying without iſſue. The Deyro ſent him two beautiful damſels; one he married out of reſpect, but would not meddle with her. His nurſe cauſed the fineſt women of the empire to be ſent for, but all to no purpoſe. At length, an armorer's daughter having pleaſed his fancy (r), he determined to eſpouſe her, and had a ſon. The ladies belonging to court, enraged to ſee a perſon of ſuch mean extraction preferred to themſelves, ſtifled the child. The crime was concealed from

(r) Ibid.

the emperor; for he would have deluged the land with blood. The exceſſive ſeverity of the laws hinders therefore their execution: when the puniſhment ſurpaſſes all meaſure, they are frequently obliged to prefer impunity to it. Book VI. Chap. 14. and 15.

CHAP. XIV.

Of the Spirit of the Roman Senate.

UNDER the conſulate of Acilius Glabrio and Piſo, the *Acilian* law * was made to prevent the intriguing for places. Dio ſays (f), that the ſenate engaged the conſuls to propoſe it, by reaſon that C. Cornelius the tribune had reſolved to cauſe moſt ſevere puniſhments to be eſtabliſhed againſt this crime; to which the people ſeemed greatly inclined. The ſenate rightly judged, that immoderate puniſhments would ſtrike indeed a terror into people's minds, but muſt have alſo this effect, that there would be no body afterwards to accuſe or condemn; whereas, by propoſing moderate penalties, there would be always judges and accuſers.

(f) Book 36.

CHAP. XV.

Of the Roman Laws in reſpect to Puniſhments.

I AM ſtrongly confirmed in my ſentiments, upon finding the Romans on my ſide; and I think that puniſhments are connected with the nature of government, when I behold this great people

* The guilty were condemned to a fine; they could not be admitted into the rank of ſenators, nor nominated to any public office. Dio, book 36.

changing

BOOK VI. Chap. 15.

changing in this reſpect their civil laws, in proportion as they altered their form of government.

The *regal* laws made for fugitives, ſlaves, and vagabonds, were very ſevere. The ſpirit of a republic would have required that the decemvirs ſhould not have inſerted thoſe laws in their twelve tables; but men who aimed at tyranny, were far from conforming to a republican ſpirit.

(*) Lib. 1.

Livy ſays (*), in relation to the puniſhment of Metius Suffetius, dictator of Alba, who was condemned by Tullius Hoſtilius to be faſtened to two chariots drawn by horſes, and to be torn aſunder; that this was the firſt and laſt puniſhment, in which the remembrance of humanity ſeemed to have been loſt. He is miſtaken; the twelve tables are full of very cruel laws *.

The deſign of the decemvirs appears moſt conſpicuous in the capital puniſhment pronounced againſt libellers and poets. This is not agreeable to the genius of a republic, where the people like to ſee the great men humbled. But perſons who aimed at the ſubverſion of liberty, were afraid of writings that might revive its ſpirit †.

After the expulſion of the decemvirs, almoſt all the penal laws were aboliſhed. It is true, they were not expreſsly repealed; but as the *Porcian* law had ordained, that no citizen of Rome ſhould be put to death, they were of no further uſe.

* We find there the puniſhment of fire, and generally capital puniſhments, theft puniſhed with death, &c.

† Sylla, animated with the ſame ſpirit as the decemvirs, followed their example, in augmenting the penal laws againſt ſatyrical writers.

This

This is exactly the time to which we may refer what Livy ſays (x) of the Romans, that no people were ever fonder of moderation in puniſhments. BOOK VI. Chap. 15. (x) Book 1.

But if to the lenity of penal laws we add the right which the party accuſed had of withdrawing before judgment was pronounced, we ſhall find that the Romans followed the ſpirit which I have obſerved to be natural to a republic.

Sylla, who confounded tyranny, anarchy, and liberty, made the *Cornelian laws*. He ſeemed to have contrived regulations, merely with a view to create new crimes. Thus diſtinguiſhing an infinite number of actions by the name of murder, he found murderers in all parts; and by a practice but too much followed, he laid ſnares, ſowed thorns, and opened precipices, whereſoever the citizens ſet their feet.

Almoſt all Sylla's laws contained only the interdiction of fire and water. To this Cæſar added the confiſcation of goods *, becauſe the rich, by preſerving their eſtates in exile, became bolder in the perpetration of crimes.

The emperors having eſtabliſhed a military government, ſoon found that it was as terrible to the prince as to the ſubject; they endeavoured therefore to temper it, and with this view had recourſe to dignities, and to the reſpect with which thoſe dignities were attended.

The government thus drew nearer a little to monarchy, and puniſhments were divided into three claſſes (y); thoſe which related to the principal perſons in the ſtate (z), which were very mild; thoſe

(y) See the 3d law, § legis ad leg. Cornel. *de Sicariis*, and a vaſt number of others in the Digeſt and in the Codex.

(z) Sublimiores.

* Pœnas facinorum auxit, cum locupletes eò facilius ſcelere ſe obligarent, quod integris patrimoniis exularent. *Suet.* in *Jul. Cæſare.*

BOOK VI. which were inflicted on perſons of an inferior rank (a), and were more ſevere; and, in fine, ſuch as concerned only perſons of the loweſt condition (b), which were the moſt rigorous.

(a) Medios. (b) Infimos leg. 3. § legis ad leg. Cornel. *de Sicariis.*

Maximinus, that fierce, that ſtupid prince, increaſed the rigour of the military government which he ought to have ſoftened. The ſenate were informed, ſays Capitolinus (c), that ſome had been crucified, others expoſed to wild beaſts, or ſowed up in the ſkins of beaſts lately killed, without any manner of regard to their dignity. It ſeemed as if he wanted to exerciſe the military diſcipline, on the model of which he pretended to regulate the civil adminiſtration.

(c) Jul. Cap. *Maximini* duo.

In *the conſiderations on the riſe and declenſion of the Roman grandeur*, we find in what manner Conſtantine changed the military deſpotiſm into a military and civil government, and drew nearer to monarchy. There we may trace the different revolutions of this ſtate, and ſee how they fell from rigor to indolence, and from indolence to impunity.

CHAP. XVI.

Of the juſt Proportion betwixt Puniſhments and Crimes.

IT is an eſſential point, that there ſhould be a certain proportion in puniſhments, becauſe it is eſſential that a great crime ſhould be avoided rather than a ſmaller, and that which is more pernicious to ſociety rather than that which is leſs.

"An impoſtor (d), who called himſelf Conſtan-
"tine Ducas, raiſed a great inſurrection at Conſtan-
"tinople. He was taken and condemned to be
"whipt;

(d) Hiſt. of Nicephorus, patriarch of Conſtantinople.

" whipt; but upon informing againſt ſeveral per- BOOK VI.
" ſons of diſtinction, he was ſentenced to be Chap. 16.
" burnt as a caluminator." It is very extraordinary, that they ſhould thus proportion the puniſhments betwixt the crime of high-treaſon and that of calumny.

This puts me in mind of a ſaying of Charles II. king of Great Britain. He ſaw a man one day ſtanding in the pillory; upon which he aſked what crime the man had committed. He was anſwered, *Pleaſe your majeſty, he has wrote a libel againſt your miniſters. The fool!* ſaid the king, *why did not he write againſt me? they would have done nothing to him.*

" Seventy perſons having conſpired againſt the " emperor Baſil (e); he ordered them to be whipt, (e) In Ni-
" and the hair of their head and beards to be burnt. cephorus's hiſtory.
" A ſtag one day having taken hold of him by the " girdle with his horn, one of his retinue drew " his ſword, cut the girdle, and ſaved him; upon " which he ordered that perſon's head to be cut " off, for having, *ſaid he*, drawn his ſword againſt " his ſovereign." Who could imagine that the ſame prince could ever have paſſed two ſuch different judgments?

It is a great abuſe amongſt us to condemn to the ſame puniſhment a perſon that only robs on the high-way, and another who robs and murders. Surely, for the public ſecurity, ſome difference ſhould be made in the puniſhment.

In *China*, thoſe who add murder to robbery, are cut in pieces (f); but not ſo the others: to this dif- (f) Duhalference it is owing, that though they rob in that de, tom. country, they never murder. 1. p. 6.

BOOK VI. Chap. 16.

In Ruſſia, where the puniſhment of robbery and murder is the ſame, they always murder (z). The dead, ſay they, tell no tales.

(z) Preſent ſtate of Ruſſia by *Perry*.

When there is no difference in the penalty, there ſhould be ſome in the expectation of pardon. In England they never murder on the high-way, becauſe robbers have ſome hopes of tranſportation, which is not the caſe in reſpect to thoſe that commit murder.

Letters of grace are of excellent uſe in moderate governments. This power which the prince has of pardoning, exerciſed with prudence, is capable of producing admirable effects. The principle of deſpotic government, which neither grants nor receives any pardon, deprives it of theſe advantages.

CHAP. XVII.

Of the Rack.

THE wickedneſs of mankind makes it neceſſary for the laws to ſuppoſe them better than they really are. Hence the depoſition of two witneſſes is ſufficient in the puniſhment of all crimes. The law believes them, as if they ſpoke by the mouth of truth. Thus we judge, that every child conceived in wedlock is legitimate; the law having a confidence in the mother, as if ſhe were chaſtity itſelf. But the uſe of the rack againſt criminals, cannot be defended on a like plea of neceſſity.

We have before us the example of a nation bleſſed with an excellent civil government *, where without any inconveniency the practice of racking cri-

* The Engliſh.

minals

minals is rejected. It is not therefore in its own nature neceſſary *. BOOK VI. Chap. 17.

So many men of learning and genius have written againſt the cuſtom of torturing criminals, that after them I durſt not preſume to meddle with the ſubject. I was going to ſay, that it might ſuit deſpotic ſtates, where whatever inſpires fear is the propereſt ſpring of government; I was going to ſay, that the ſlaves among the Greeks and Romans ——But nature cries out aloud, and aſſerts her rights.

CHAP. XVIII.

Of pecuniary and corporal Puniſhments.

OUR anceſtors, the Germans, admitted of none but pecuniary puniſhments. Thoſe free and warlike people were of opinion, that their blood ought not to be ſpilt but with ſword in hand. On the contrary, theſe puniſhments are rejected by the Japaneſe (h), under pretence that the rich might elude them. But are not the rich afraid of being ſtripped of their property? And might not pecuniary penalties be proportioned to people's fortunes? and, in fine, might not infamy be added to thoſe puniſhments?

(h) See Kempfer.

* The citizens of Athens could not be put to the rack (*Lyſias, Orat. in Agorat.*) unleſs it was for high-treaſon. The torture was uſed within thirty days after condemnation. (*Curius Fortunatus, Rhetor. Schol. lib.* 2.) There was no preparatory torture. In regard to the Romans, the 3d and 4th law *ad leg. Juliam Majeſt.* ſhews, that birth, dignity, and the military profeſſion, exempted people from the rack, except in caſes of high-treaſon. See the prudent reſtrictions of this practice made by the laws of the Viſigoths.

Book VI. Chap. 19. and 20.

A good legiſlator takes a juſt medium; he ordains neither always pecuniary, nor always corporal puniſhments.

CHAP. XIX.

Of the Law of Retaliation.

THE uſe of the *law of retaliation* * is very frequent in deſpotic countries, where they are fond of ſimple laws. Moderate governments admit of it ſometimes; but with this difference, that the former exerciſe it in full rigour, whereas among the latter it ever receives ſome kind of limitation.

The law of the twelve tables admitted two; firſt, it never condemned to retaliation, but when the plaintiff could not be ſatisfied in any other manner †. Secondly, after condemnation they might pay damages and intereſt (i), and then the corporal was changed into a pecuniary puniſhment (k).

(i) Ibid.
(k) See alſo the law of the Viſigoths, book 6. tit. 4. § 3. and 5.

CHAP. XX.

Of the Puniſhment of Fathers for the Crimes of their Children.

IN China, fathers are puniſhed for the crimes of their children. This was likewiſe the cuſtom of Peru (l); a cuſtom derived from the notion of deſpotic power.

(l) See *Garcilaſſo*, hiſtory of the civil wars of the Spaniards.

Little does it ſignify to ſay, that in China the father is puniſhed for not having exerted that paternal authority, which nature has eſtabliſhed, and the

* It is eſtabliſhed in the Koran: See the *chapter of the Cow.*

† Si membrum rupit, ni cum eo pacit, talio eſto. *Aulus Gellius*, lib. 20. cap. 1.

laws

laws themſelves have improved. This ſtill ſuppoſes that there is no honor among the Chineſe. Amongſt us, parents whoſe children are condemned by the laws of their country, and children * whoſe parents have undergone the like fate, are as ſeverely puniſhed by ſhame, as they would be in China by the loſs of their lives.

CHAP. XXI.

Of the Clemency of the Prince.

CLEMENCY is the characteriſtic of monarchs. In republics, whoſe principle is virtue, it is not ſo neceſſary. In deſpotic governments, where fear predominates, it is leſs cuſtomary, becauſe the great men are to be reſtrained by examples of ſeverity. It is more neceſſary in monarchies, where they are governed by honor, which frequently requires what the very law forbids. Diſgrace is here equivalent to chaſtiſement; and even the forms of juſtice are puniſhments. This is becauſe particular kinds of penalty are formed by ſhame, which on every ſide invades the delinquent.

The great men in monarchies are ſo heavily puniſhed by diſgrace, by the loſs (though often imaginary) of their fortune, credit, acquaintances, and pleaſures, that rigour in reſpect to them is needleſs. It can tend only to diveſt the ſubject of the affection he has for the perſon of his prince,

* Inſtead of puniſhing them, *ſays Plato*, they ought to be commended for not having followed their father's example. *Book 9. of laws*

Book VI. Chap. 21.

and of the reſpect he ought to have for publie poſts and employments.

As the inſtability of the great is natural to a deſpotic government, ſo their ſecurity is interwoven with the nature of monarchy.

So many are the advantages which monarchs gain by clemency; ſo greatly does it raiſe their fame, and endear them to their ſubjects; that it is generally happy for them to have an opportunity of diſplaying it; which in this part of the world is ſeldom wanting.

Some branch perhaps of their authority, but never hardly the whole, will be diſputed: and if they ſometimes fight for their crown; they do not fight for their life.

But ſome may aſk, when is it proper to puniſh, and when to pardon? This is a point eaſier felt than preſcribed. When there is danger in the exerciſe of clemency, it is viſible; nothing ſo eaſy as to diſtinguiſh it from that imbecillity, which expoſes princes to contempt and to the very incapacity of puniſhing.

(m) *Evagr. hiſt.*

(n) Frag. of Suidas, in *Conſtant. Porphyrog.*

The emperor Maurice (m) made a reſolution never to ſpill the blood of his ſubjects. Anaſtaſius (n) puniſhed no crimes at all. Iſaac Angelus took an oath, that no one ſhould be put to death, during his reign. Thoſe Greek emperors had forgot that it was not for nothing they were intruſted with the ſword.

BOOK VII.

Conſequences of the different Principles of the three Governments with reſpect to ſumptuary Laws, Luxury, and the Condition of Women.

CHAP. I.

Of Luxury.

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LUXURY is ever in proportion to the inequality of fortunes. If the riches of a ſtate are equally divided, there will be no luxury; for it is founded merely on the conveniencies acquired by the labour of others.

In order to have this equal diſtribution of riches, the law ought to give to each man only what is neceſſary for nature. If they exceed theſe bounds, ſome will ſpend, and others will acquire, by which means an inequality will be eſtabliſhed.

Suppoſing what is neceſſary for the ſupport of nature to be equal to a given ſum, the luxury of thoſe who have only what is barely neceſſary, will be equal to a *cypher*; if a perſon happens to have double that ſum, his luxury will be equal to one; he that has double the latter's ſubſtance, will have a luxury equal to three; if this be ſtill doubled, there will be a luxury equal to ſeven; ſo that the property of the ſubſequent individual being always ſuppoſed double to that of the preceding, the luxury will increaſe double, and an unit be always added,

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added, in this progreſſion, 0, 1, 3, 7, 15, 31, 63, 127.

In Plato's republic*, luxury might have been exactly calculated. There were four ſorts of Cenſus's, or rates of eſtates. The firſt was exactly the term beyond poverty, the ſecond was double, the third triple, the fourth quadruple to the firſt. In the firſt Cenſus, luxury was equal to a *cypher*; in the ſecond to one, in the third to two, in the fourth to three; and thus it followed in an arithmetical proportion.

Conſidering the luxury of different nations with reſpect to one another, it is in each ſtate in a compound proportion to the inequality of fortunes among the ſubjects, and to the inequality of wealth in different ſtates. In Poland, for example, there is an extreme inequality of fortunes; but the poverty of the whole hinders them from having ſo much luxury as in a more opulent government.

Luxury is alſo in proportion to the populouſneſs of the towns, and eſpecially of the capital; ſo that it is in a compound proportion to the riches of the ſtate, to the inequality of private fortunes, and to the number of people ſettled in particular places.

In proportion to the populouſneſs of towns, the inhabitants are filled with notions of vanity, and actuated by an ambition of diſtinguiſhing themſelves by trifles†. If they are very numerous, and moſt of

* The firſt Cenſus was the hereditary ſhare in land, and *Plato* would not allow them to have, in other effects, above a triple of the hereditary ſhare. *See his Laws, book* 5.

† In large and populous cities, *ſays the Author of the Fable of the Bees*, tom. 1. p. 97. they wear clothes above their rank, and, conſequently, have the pleaſure of being eſteemed by a vaſt majority, not as what they are, but what they appear to be.

of them ſtrangers to one another, their vanity redoubles, becauſe there are greater hopes of ſucceſs. As luxury inſpires theſe hopes, each man aſſumes the marks of a ſuperior condition. But by endeavouring thus at diſtinction, every one becomes equal, and diſtinction ceaſes; as all are deſirous of reſpect, no body is regarded. Book VII. Chap. 1.

Hence ariſes a general inconveniency. Thoſe who excel in a profeſſion, ſet what value they pleaſe on their labour; this example is followed by people of inferior abilities; and then there is an end of all proportion between our wants and the means of ſatisfying them. When I am forced to go to law, I muſt be able to fee council; when I am ſick, I muſt have it in my power to fee a phyſician.

It is the opinion of ſeveral, that the aſſembling ſo great a multitude of people in capital cities, is an obſtruction to commerce, becauſe the inhabitants are no longer at a proper diſtance from each other. But I cannot think ſo; for men have more deſires, more wants, more fancies, when they live together.

CHAP. II.

Of ſumptuary Laws in a Democracy.

WE have obſerved, that in a republic where riches are equally divided, there can be no ſuch thing as luxury; and as we have ſhewn in the 5th book (a), that this equal diſtribution con-

(a) Chap. 4. and 5.

be.—They have the ſatisfaction to imagine, that they appear what they would be; which, to weak minds, is a pleaſure almoſt as ſubſtantial as they could reap from the very accompliſhment of their wiſhes.

ſtitutes

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ſtitutes the excellency of a republican government; hence it follows, that the leſs luxury there is in a republic, the more it is perfect. There was none among the old Romans, none among the Lacedæmonians; and in republics where this equality is not quite loſt, the ſpirit of commerce, induſtry, and virtue, renders every man able and willing to live on his own property, and conſequently prevents the growth of luxury.

The laws concerning the new diviſion of lands, inſiſted upon ſo eagerly in ſome republics, were of the moſt ſalutary nature. They are dangerous, only as they are ſubitaneous. By reducing inſtantly the wealth of ſome, and increaſing that of others, they form a revolution in each family, and muſt produce a general one in the ſtate.

In proportion as luxury gains ground in a republic, the minds of the people are turned towards their particular intereſts. Thoſe who are allowed only what is neceſſary, have nothing but their own reputation and their country's glory in view. But a ſoul depraved by luxury, has many other deſires; and ſoon becomes an enemy to the laws that confine it. The luxury in which the garriſon of *Rhegio* began to live, was the cauſe of their maſſacring the inhabitants.

No ſooner were the Romans corrupted, than their deſires became boundleſs and immenſe. Of this we may judge by the price they ſet on things. A pitcher of Falernian wine (b) was ſold for a hundred Roman denarii; a barrel of ſalt meat from the kingdom of Pontus coſt four hundred; a good cook four talents; and for boys, no price was reckoned too great. When the whole world, impelled

(b) Fragment of the 36th book of Diodorus, quoted by Conſt. Porphyrogen. *in his extract of virtues and vices.*

impelled by the force of corruption, is immerſed in voluptuouſneſs (c), what muſt then become of virtue?

(c) Cum maximus omnium impetus ad luxuriam eſſet. *Ibid.*

CHAP. III.

Of ſumptuary Laws in an Ariſtocracy.

THERE is this inconveniency in an ill-conſtituted ariſtocracy, that the wealth centers in the nobility, and yet they are not allowed to ſpend; for as luxury is contrary to the ſpirit of moderation, it muſt be baniſhed from thence. This government comprehends therefore only people who are extremely poor, and cannot acquire; and people who are vaſtly rich, and cannot ſpend.

In Venice, they are compelled by the laws to moderation. They are ſo habituated to parſimony, that none but courtezans can make them part with their money. Such is the method made uſe of for the ſupport of induſtry; the moſt contemptible of women may be profuſe without danger, whilſt thoſe who contribute to their extravagance, conſume their days in the greateſt obſcurity.

Admirable in this reſpect were the inſtitutions of the principal republics of Greece. The rich employed their money in feſtivals, muſical chorus's, chariots, horſe-races, and chargeable offices. Wealth was therefore as burthenſome there as poverty.

CHAP. IV.

Of ſumptuary Laws in a Monarchy.

TACITUS ſays (d), "*That the Suiones, a* (d) De morib. German.
"*German nation, have a particular reſpect* "*for riches; for which reaſon they live under the* "*government*

"*government of one person.*" This shews, that luxury is extremely proper for monarchies, and that under this government there must be no sumptuary laws.

As riches, by the very constitution of monarchies, are unequally divided, there is an absolute necessity for luxury. Were the rich not to be lavish, the poor would starve. It is even necessary here, that the expences of the opulent should be in proportion to the inequality of fortunes; and that luxury, as we have already observed, should increase in this proportion. The augmentation of private wealth is owing to its having deprived one part of the citizens of their necessary support; this must therefore be restored to them.

Hence it is, that for the preservation of a monarchical state, luxury ought continually to increase, and to grow more extensive, as it rises from the labourer to the artificer, to the merchant, to the magistrate, to the nobility, to the great officers of state, up to the very prince; otherwise the nation will be undone.

In the reign of Augustus, a proposal was made in the Roman senate, which was composed of grave magistrates, learned civilians, and of men whose heads were filled with the notion of the primitive times, to reform the manners and luxury of women. It is curious to see in *Dio* (e), with what art this prince eluded the importunate sollicitations of those senators. This was because he was founding a monarchy, and dissolving a republic.

(e) Dio Cassius, lib. 54.

Under Tiberius, the Ædiles proposed in the senate, the re-establishment of the ancient sumptuary

laws (f). This prince, who did not want ſenſe, oppoſed it. "*The ſtate*, ſaid he, *could not poſſibly ſubſiſt* "*in the preſent ſituation of things. How could* "*Rome, how could the provinces, live? We were* "*frugal, while we were only maſters of one city;* "*now we conſume the riches of the whole globe,* "*and employ both the maſters and their ſlaves in our* "*ſervice.*" He plainly ſaw, that ſumptuary laws would not ſuit the preſent form of government.

When a propoſal was made under the ſame emperor to the ſenate, to prohibit the governors from carrying their wives with them into the provinces, becauſe of the diſſoluteneſs and irregularity which followed thoſe ladies, the propoſal was rejected. It was ſaid, *that the examples of ancient auſterity had been changed into a more agreeable method of living* (g). They found there was a neceſſity for different manners.

Luxury is therefore abſolutely neceſſary in monarchies; as it is alſo in deſpotic ſtates. In the former, it is the uſe of liberty; in the latter, it is the abuſe of ſervitude. A ſlave appointed by his maſter to tyrannize over other wretches of the ſame condition, uncertain of enjoying to-morrow the bleſſings of to-day, has no other felicity than that of glutting the pride, the paſſions and voluptuouſneſs of the preſent moment.

Hence ariſes a very natural reflexion. Republics end with luxury; monarchies with poverty (h).

(f) Tacit. Annal. lib. 3.

(g) *Multa duritiei veterum mutata. Tacit. Annal. lib. 3.*

(h) Opulentia paritura mox egeſtatem. Florus, lib. 3.

CHAP.

CHAP. V.

In what Caſes ſumptuary Laws are uſeful in a Monarchy.

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WHETHER it was from a republican ſpirit, or from ſome other particular circumſtance, ſumptuary laws were made in Aragon, in the middle of the thirteenth century. James the firſt ordained, that neither the king, nor any of his ſubjects, ſhould have above two ſorts of diſhes at a meal, and that each diſh ſhould be dreſſed only one way, except it were game of their own killing (1).

(1) Conſtitution of James I. in the year 1234, article 6, in Marca Hiſpanica, p. 1429.

In our days, ſumptuary laws have been alſo enacted in Sweden; but with a different view from thoſe of Aragon.

A government may make ſumptuary laws with a view to abſolute frugality; this is the ſpirit of ſumptuary laws in republics; and the very nature of the thing ſhews, that ſuch was the deſign of thoſe of Aragon.

Sumptuary laws may likewiſe be eſtabliſhed with a deſign to promote a relative frugality: when a government perceiving that foreign merchandizes, being at too high a price, will require ſuch an exportation of home manufactures, as to deprive them of more advantages by the loſs of the latter, than they can receive from the poſſeſſion of the former, they will forbid their being introduced. And this is the ſpirit of the laws which in our days have been paſſed in Sweden *.

* They have prohibited rich wines and other coſtly merchandizes.

Such

Such are the ſumptuary laws proper for monarchies. Book VII. Chap. 6.

In general, the poorer a ſtate, the more it is ruined by its relative luxury; and conſequently the more occaſion it has for relative ſumptuary laws. The richer a ſtate, the more it thrives by its relative luxury; for which reaſon it muſt take particular care not to make any relative ſumptuary laws. This we ſhall better explain in the book on commerce (d); here we treat only of abſolute luxury.

(d) See book 20 chap. 20.

CHAP. VI.

Of the Luxury of China.

SUMPTUARY laws may, in ſome governments, be neceſſary for particular reaſons. The people, by the influence of the climate, may grow ſo numerous, and the means of ſubſiſting may be ſo uncertain, as to render an univerſal application to agriculture extremely neceſſary. As luxury in thoſe countries is dangerous, their ſumptuary laws ſhould be very ſevere. In order therefore to be able to judge whether luxury ought to be encouraged or proſcribed, we ſhould examine firſt what relation there is between the number of people and the facility they have of procuring ſubſiſtence. In England the ſoil produces more grain than is neceſſary for the maintenance of ſuch as cultivate the land, and of thoſe who are employed in the woollen manufactures. This country may be therefore allowed to have ſome trifling arts, and conſequently luxury. In France likewiſe there is corn enough for the ſupport of the huſbandman,

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and of the manufacturer. Beſides, a foreign trade may bring in ſo many neceſſaries in return for toys, that there is no danger to be apprehended from luxury.

On the contrary, in China the women are ſo prolific, and the human ſpecies multiplies ſo faſt, that the lands, tho' never ſo much cultivated, are ſcarce ſufficient to ſupport the inhabitants. Here therefore luxury is pernicious, and the ſpirit of induſtry and œconomy is as requiſite, as in any republic*. They are obliged to purſue the neceſſary arts, and to ſhun thoſe of luxury and pleaſure.

This is the ſpirit of the excellent decrees of the Chineſe emperors. "*Our anceſtors*, ſays an emperor "of the family of the Tangs (p), *held it as a maxim, that if there was a man who did not work, or "a woman that was idle, ſomebody muſt ſuffer cold "or hunger in the empire.*" And on this principle he ordered a vaſt number of the monaſteries of Bonzes to be deſtroyed.

(p) In an ordinance quoted by Father Du Halde, tom. 2. p. 497.

The third emperor of the one and twentieth Dynaſty (q), to whom ſome precious ſtones were brought that had been found in a mine, ordered it to be ſhut up, not chuſing to fatigue his people with working for a thing that could neither feed nor cloath them.

(q) Hiſtory of China, 21ſt Dynaſty in Father Du Halde's work, tom. 1.

So great is our luxury, ſays Kiayventi (r), *that people adorn with embroidery the ſhoes of boys and girls, whom they are obliged to ſell.* Is employing ſo many people in making cloaths for one perſon, the way to prevent a great many from want-

(r) In a diſcourſe cited by Father Du Halde, tom. 2. p. 418.

* Luxury has been here always prohibited.

ing

ing cloaths? There are ten men who eat the fruits of the earth to one employed in agriculture; and is this the means to preſerve numbers from wanting nouriſhment? Book VII. Chap. 7.

CHAP. VII.

Fatal Conſequence of Luxury in China.

IN the hiſtory of China we find it has had twenty-two ſucceſſive Dynaſties, that is, it has experienced twenty-two general, without mentioning a prodigious number of particular, revolutions. The three firſt Dynaſties laſted a long time, becauſe they were wiſely adminiſtred, and the empire had not ſo great an extent as it afterwards obtained. But we may obſerve in general that all thoſe Dynaſties began very well. Virtue, attention, and vigilance, are neceſſary in China; theſe prevailed in the commencement of the Dynaſties, and failed in the end. It was natural, that emperors trained up in military toil, who had compaſſed the dethroning of a family immerſed in pleaſure, ſhould adhere to virtue, which they had found ſo advantageous, and be afraid of voluptuouſneſs, which they knew had proved ſo fatal to the family dethroned. But after the three or four firſt princes, corruption, luxury, indolence, and pleaſure, poſſeſſed their ſucceſſors; they ſhut themſelves up in a palace; their underſtanding was impaired; their life was ſhortened; the family declined; the grandees roſe up; the eunuchs gained credit; none but children were ſet on the throne; the palace was at variance with the empire; a lazy ſet of people that dwelled there, ruined the induſtrious part of the nation; the em-

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peror was killed or deſtroyed by an uſurper, who founded a family, the third or fourth ſucceſſor of which went and ſhut himſelf up in the very ſame palace.

CHAP. VIII.

Of public Continency.

SO many are the imperfections that attend the loſs of virtue in women, and ſo greatly are their minds depraved, when this principal guard is removed, that in a popular ſtate public incontinency may be conſidered as the laſt of miſeries, and as a certain fore-runner of a change in the conſtitution.

Hence it is that the ſage legiſlators of republican ſtates have ever required of women a particular gravity of manners. They have proſcribed not only vice, but the very appearance of it. They have baniſhed even all commerce of gallantry, a commerce that produces idleneſs, that renders the women corrupters even before they are corrupted, that gives a value to trifles, and debaſes things of importance; a commerce, in fine, that makes people act intirely by the maxims of ridicule, in which the women are ſo perfectly ſkilled.

CHAP. IX.

Of the Condition or State of Women in different Governments.

IN monarchies women are ſubject to very little reſtraint, becauſe as the diſtinction of ranks calls them to court, there they aſſume a ſpirit of liberty,

liberty, which is almoſt the only one tolerated in that place. Each courtier avails himſelf of their charms and paſſions, in order to advance his fortune: and as their weakneſs admits not of pride, but of vanity, luxury conſtantly attends them.

In deſpotic governments women do not introduce, but are themſelves an object of, luxury. They muſt be in a ſtate of the moſt rigorous ſervitude. Every one follows the ſpirit of the government, and adopts in his own family the cuſtoms he ſees elſewhere eſtabliſhed. As the laws are very ſevere and executed on the ſpot, they are afraid leſt the liberty of women ſhould expoſe them to danger. Their quarrels, indiſcretions, repugnances, jealouſies, piques, and that art, in fine, which little ſouls have of intereſting great ones, would be attended there with fatal conſequences.

Beſides, as princes in thoſe countries make a ſport of human nature, they allow themſelves a multitude of women; and a thouſand conſiderations oblige them to keep thoſe women in cloſe confinement.

In republics women are free by the laws, and reſtrained by manners; luxury is baniſhed from thence, and with it corruption and vice.

In the cities of Greece, where they were not under the reſtraint of a religion which declares that even amongſt men regularity of manners is a part of virtue; where a blind paſſion triumphed with a boundleſs inſolence, and love appeared only in a ſhape which we dare not mention, while marriage was conſidered as nothing more than ſimple friend-

ſhip*; ſuch was the virtue, ſimplicity, and chaſtity of women in thoſe cities, that in this reſpect hardly any people were ever known to have had a better and wiſer polity †.

CHAP. X.

Of the domeſtic Tribunal among the Romans.

THE Romans had no particular magiſtrates, like the Greeks, to inſpect the conduct of women. The cenſors had not an eye over them but as over the reſt of the republic. The inſtitution of the domeſtic tribunal § ſupplied the magiſtracy eſtabliſhed among the Greeks ‖.

The huſband ſummoned the wife's relations, and tried her in their preſence *. This tribunal preſerved the manners of the republic; and at the ſame time thoſe very manners maintained this tribunal. For it decided not only in reſpect to the violation

* In reſpect to true love, *ſays Plutarch*, the women have nothing to ſay to it. *In his treatiſe of love*, *p.* 600. He ſpoke in the ſtile of his time. See Xenophon in the dialogue intituled *Hiero*.

† At Athens there was a particular magiſtrate who inſpected the conduct of women.

§ Romulus inſtituted this tribunal, as appears from Dionyſius Halicarnaſſ. book 2. p. 96.

‖ See in Livy, book 39. the uſe that was made of this tribunal at the time of the conſpiracy of the Bacchanalians: they gave the name of conſpiracy againſt the republic to aſſemblies, in which the morals of women and young people were debauched.

* It appears from *Dionyſ. Halicarn.* lib. 2, that Romulus's inſtitution was, that in ordinary caſes the huſband ſhould ſit as judge in preſence of the wife's relations, but that in heinous crimes he ſhould determine in conjunction with five of them. Hence *Ulpian* tit. 6. § 9, 12, & 13, diſtinguiſhes in reſpect to the different judgments of manners, between thoſe which he calls important, and thoſe which are leſs ſo, *graviores*, *leviores*.

of the laws, but alſo of manners; now in order to judge of the violation of the latter, manners are requiſite.

The penalties inflicted by this tribunal ought to be, and actually were, arbitrary: for all that relates to manners, and to the rules of modeſty, can hardly be compriſed under one code of laws. It is eaſy indeed to regulate by laws what we owe to others; but it is very difficult to compriſe all we owe to ourſelves.

The domeſtic tribunal inſpected the general conduct of women: but there was one crime, which beſide the animadverſion of this tribunal, was likewiſe ſubject to a public accuſation. This was adultery; whether that in a republic ſo great a depravation of manners intereſted the government; or whether the wife's immorality might render the huſband's ſuſpected; or whether, in fine, they were afraid leſt even honeſt people might chuſe that this crime ſhould rather be concealed, than puniſhed.

CHAP. XI.

In what manner the Inſtitutions changed at Rome, together with the Government.

AS manners were ſuppoſed by the domeſtic tribunal, they were alſo ſuppoſed by the public accuſation; and hence it is that theſe two things fell together with the public manners, and ended with the republic †.

† *Judicio de moribus (quod antea quidem in antiquis legibus poſitum erat, non autem frequentabatur) penitus abolito, leg.* 11. *Cod. de repud.*

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The eſtabliſhing of perpetual queſtions, that is, the diviſion of juriſdiction among the prætors, and the cuſtom gradually introduced of the prætors determining all cauſes themſelves*, weakened the uſe of the domeſtic tribunal. This appears by the ſurprize of hiſtorians, who look upon the deciſions which Tiberius cauſed to be given by this tribunal, as ſingular facts, and as a renewal of the antient courſe of pleading.

The eſtabliſhment of monarchy and the change of manners put likewiſe an end to public accuſations. It might be apprehended leſt a diſhoneſt man, affronted at the ſlight ſhewn him by a woman, vexed at her refuſal, and irritated even by her virtue, ſhould form a deſign to deſtroy her. The *Julian* law ordained that a woman ſhould not be accuſed of adultery, till after her huſband had been charged with favouring her irregularities; which limited greatly, and annihilated, as it were, this ſort of accuſation †.

Sixtus Quintus ſeemed to have been deſirous of reviving the public accuſation ‖. But there needs very little reflection to ſee, that this law would be more improper in ſuch a monarchy as his, than in any other.

* *Judicia extraordinaria.*

† It was entirely aboliſhed by Conſtantine: "It is a ſhame, "*ſaid he*, that ſettled marriages ſhould be diſturbed by the preſumption of ſtrangers.

‖ Sixtus Quintus ordained, that if a huſband did not come and make his complaint to him of his wife's infidelity, he ſhould be put to death. See *Leti*.

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CHAP. XII.

Of the Guardianſhip of Women among the Romans.

THE Roman laws ſubjected women to a perpetual guardianſhip, except they were under cover and ſubject to the authority of a huſband *. This guardianſhip was given to the neareſt of the male relations; and by a vulgar expreſſion † it appears they were very much confined. This was proper for a republic, but not at all neceſſary in a monarchy §. Book VII. Chap. 12. and 13.

That the women among the antient Germans were likewiſe under a perpetual tutelage, appears from the different codes of the Laws of the Barbarians ‖. This cuſtom was communicated to the monarchies founded by thoſe people; but was not of a long duration.

CHAP. XIII.

Of the puniſhments decreed by Emperors againſt the Incontinency of Women.

THE *Julian* law ordained a puniſhment againſt adultery. But ſo far was this law, any more than thoſe afterwards made on the ſame account, from being a mark of regularity of manners, that on the contrary it was a proof of their depravation.

* *Niſi conveniſſent in manum viri.*

† *Ne ſis mihi patruus oro.*

§ The Papian law ordained under Auguſtus that women who had borne three children ſhould be exempt from this tutelage.

‖ This tutelage was by the Germans called *Mundeburdium.*

The

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The whole political ſyſtem in reſpect to women received a change in the monarchical ſtate. The queſtion was no longer to oblige them to a regularity of manners, but to puniſh their crimes. That new laws were made to puniſh their crimes, was owing to their leaving thoſe tranſgreſſions unpuniſhed, which were not of ſo criminal a nature.

The frightful diſſolution of manners obliged indeed the emperors to enact laws in order to put ſome ſtop to lewdneſs; but it was not their intention to eſtabliſh a general reformation. Of this the poſitive facts related by hiſtorians are a much ſtronger proof, than all theſe laws can be of the contrary. We may ſee in *Dio* the conduct of Auguſtus on this occaſion, and in what manner he eluded, both in his prætorian and cenſorian office, the repeated inſtances that were made him ‖, for that purpoſe.

It is true, that we find in hiſtorians very rigid ſentences, paſſed in the reigns of Auguſtus and Tiberius againſt the lewdneſs of ſome Roman ladies: but by ſhewing us the ſpirit of thoſe reigns, at the ſame time they demonſtrate the ſpirit of thoſe deciſions.

‖ Upon their bringing before him a young man, who had married a woman with whom he had before carried on an illicit commerce, he heſitated a long while, not daring to approve or to puniſh theſe things. At length recollecting himſelf, *ſeditions*, ſays he, *have been the cauſe of very great evils, let us forget them.* Dio book 54. The ſenate having deſired him to give them ſome regulations in reſpect to women's morals, he evaded their petition by telling them, that they ſhould chaſtiſe their wives, in the ſame manner as he did his; upon which they deſired him to tell them how he behaved to his wife? (I think a very indiſcreet queſtion).

The

The principal design of Augustus and Tiberius was to punish the dissoluteness of their relations. It was not their immorality they punished, but a particular crime of impiety or high treason * of their own invention, which served to promote a respect for majesty, and answered their private revenge. Hence it is that the Roman historians inveigh so bitterly against this tyranny.

The penalty of the *Julian* law was small †. The emperors insisted that in passing sentence the judges should increase the penalty of the law. This was the subject of the invectives of historians. They did not examine whether the women were deserving of punishment, but whether they had violated the law, in order to punish them.

One of the most tyrannical proceedings of Tiberius ‡, was the abuse he made of the ancient laws. When he wanted to extend the punishment of a Roman lady beyond that inflicted by the *Julian* law, he revived the domestic tribunal ‖.

These regulations in respect to women concerned only senatorial families, but not the common people. Pretences were wanted to accuse the great,

* Culpam inter viros & fœminas vulgatam gravi nomine læsarum religionum appellando, clementiam majorum suasque ipse leges egrediebatur, *Tacit.* Annal. lib. 3.

† This law is given in the Digest; but without mentioning the penalty. It is supposed it was only *relegatio*, because that of incest was only *deportatio*. Leg. *si quis viduam*, ff. de quæst.

‡ Proprium id Tiberio fuit scelera nuper reperta priscis verbis obtegere, *Tacit.*

‖ Adulterii graviorem pœnam deprecatus, ut exemplo majorum propinquis suis ultra ducentesimum lapidem removeretur, suasit. Adultero Manlio Italiâ atque Africâ interdictum est. *Tacit*, Annal. lib. 2.

which

Book VII. Chap. 14. and 15.

which were conſtantly furniſhed by the diſſolute behaviour of the ladies.

In fine, what I have above obſerved, namely that regularity of manners is not the principle of monarchy, was never better verified than under thoſe firſt emperors; and whoever doubts of it need only read Tacitus, Suetonius, Juvenal, or Martial.

CHAP. XIV.

Sumptuary Laws among the Romans.

WE have ſpoken of public incontinency, becauſe it is the inſeparable companion of luxury. If we leave the motions of the heart at liberty, how ſhall we be able to reſtrain the weakneſſes of the mind?

At Rome, beſides the general inſtitutions, the cenſors prevailed on the magiſtrates to enact ſeveral particular laws for maintaining the frugality of women. This was the deſign of the Fannian, Licinian, and Oppian laws. We may ſee in *Livy* (x) the great ferment the ſenate was in, when the women inſiſted upon the revocation of the Oppian law. The abrogation of this law is fixed upon by Valerius Maximus as the period from whence we may date the luxury of the Romans.

(x) Decad. IV. lib. 4.

CHAP. XV.

Of Dowries and Nuptial Advantages in different Conſtitutions.

DOWRIES ought to be conſiderable in monarchies, in order to enable huſbands to ſupport their rank and the eſtabliſhed luxury. In republics,

republics, where luxury ſhould never reign *, they ought to be moderate; but there ſhould be hardly any at all in deſpotic governments, where women are in ſome meaſure ſlaves. Book VII. Chap. 16.

The community of goods introduced by the French laws between man and wife, is extremely well adapted to a monarchical government; becauſe the women are thereby intereſted in domeſtic affairs, and compelled, as it were, to take care of their family. It is leſs ſo in a republic, where women are poſſeſſed of more virtue. But it would be quite abſurd in deſpotic governments, where the women themſelves generally conſtitute a part of the maſter's property.

As women are in a ſtate that furniſhes ſufficient inducements to marriage, the advantages which the law gives them over the huſband's property, are of no ſervice to ſociety. But in a republic they would be extremely prejudicial, becauſe riches are productive of luxury. In deſpotic governments the profits accruing from marriage ought to be mere ſubſiſtence, and no more.

CHAP. XVI.

An excellent cuſtom of the Samnites.

THE Samnites had a cuſtom which in ſo ſmall a republic, and eſpecially in their ſituation, muſt have been productive of admirable effects. The young people were all convened in one place, and their conduct was examined. He that was

* Marſeilles was the wiſeſt of all the republics in its time; here it was ordained that dowries ſhould not exceed one hundred crowns in money, and five in cloaths, as Strabo obſerves, lib. 4.

de-

Book VII. Chap. 17.

declared the beſt of the whole aſſembly, had leave given him to take which girl he pleaſed for his wife; the ſecond beſt choſe after him; and ſo on (c). Admirable inſtitution! The only recommendation that young men could have on this occaſion, was their virtue, and the ſervices done their country. He who had the greateſt ſhare of theſe endowments, choſe which girl he liked out of the whole nation. Love, beauty, chaſtity, virtue, birth, and even wealth itſelf, were all, in ſome meaſure, the dowry of virtue. A nobler, and grander recompence, leſs chargeable to a petty ſtate, and more capable of influencing both ſexes, could ſcarce be imagined.

(c) Fragment of Nicolaus Damaſcenus, taken from Stobeus in the collection of Conſtantine Porphyrogenitus.

The Samnites were deſcended from the Lacedæmonians: and Plato, whoſe inſtitutes are only an improvement of thoſe of Lycurgus, enacted nearly the ſame law *.

CHAP. XVII.

Of Female Adminiſtration.

IT is contrary to reaſon and nature that women ſhould reign in families, as was cuſtomary among the Ægyptians; but not that they ſhould govern an empire. In the former caſe the ſtate of their natural weakneſs does not permit them to have the pre-eminence; in the latter their very weakneſs generally gives them more lenity and moderation, qualifications fitter for a good adminiſtration, than roughneſs and ſeverity.

* He even permits them to have a more frequent interview with one another.

In

In the Indies they are very eaſy under a female government; and it is ſettled that if the male iſſue be not of a mother of the ſame blood, the females born of a mother of the blood-royal muſt ſucceed (k). And then they have a certain nnmber of perſons who aſſiſt them to bear the weight of the government. According to Mr. *Smith*, (l) they are very eaſy in Africa under a female adminiſtration. If to this we add the example of England and Ruſſia, we ſhall find that they ſucceed alike both in moderate and deſpotic governments.

(k) Edifying Letters, 14th collection

(l) Voyage to Guinea, part the ſecond, of the kingdom of Angola, on the Golden Coaſt.

BOOK VIII.

Of the Corruption of the Principles of the three Governments.

CHAP. I.

General Idea of this Book.

Book VIII. Chap. 1. and 2.

THE corruption of this government generally begins with that of the principles.

CHAP. II.

Of the Corruption of the Principles of Democracy.

THE principle of democracy is corrupted not only when the ſpirit of equality is extinct, but likewiſe when they fall into a ſpirit of extreme equality, and when each citizen would fain be upon a level with thoſe, whom he has choſen to command him. Then the people, incapable of bearing the very power they have delegated, want to manage every thing themſelves, to debate for the ſenate, to execute for the magiſtrate, and to decide for the judges.

When this is the caſe, virtue can no longer ſubſiſt in the republic. The people are deſirous of exerciſing the functions of the magiſtrates; who ceaſe to be revered. The deliberations of the ſenate are ſlighted; all reſpect is then laid aſide for the ſenators, and conſequently for old age. If there is no more

more reſpect for old age, there will be none preſently for parents; deference to huſbands will be likewiſe thrown off, and ſubmiſſion to maſters. This licentiouſneſs will ſoon become general; and the trouble of command be as fatiguing as that of obedience. Wives, children, ſlaves, will ſhake off all ſubjection. No longer will there be any ſuch thing as manners, order, or virtue.

We find in *Xenophon*'s *banquet* a very lively deſcription of a republic in which the people abuſed their equality. Each gueſt gives in his turn the reaſon why he is ſatisfied. "*Content I am*, ſays "Chamides, *becauſe of my poverty. When I was* "*rich, I was obliged to pay my court to informers,* "*knowing I was more liable to be hurt by them,* "*than capable of doing them harm. The republic* "*conſtantly demanded ſome new tax of me; and I* "*could not decline paying. Since I am grown poor,* "*I have acquired authority; nobody threatens me; I* "*rather threaten others. I can go or ſtay where I* "*pleaſe. The rich already riſe from their ſeats and* "*give me the way. I am a king, I was before a* "*ſlave: I paid taxes to the republic, now it main-* "*tains me: I am no longer afraid of loſing; but I* "*hope to acquire.*"

The people fall into this misfortune, when thoſe in whom they confide, deſirous of concealing their own corruption, endeavour to corrupt them. To diſguiſe their own ambition, they ſpeak to them only of the grandeur of the ſtate; to conceal their own avarice, they inceſſantly flatter theirs.

The corruption will increaſe among the corrupters, and likewiſe among thoſe who are already cor-

rupted. The people will divide the public money among themſelves, and having added the adminiſtration of affairs to their indolence will be for blending their poverty with the amuſements of luxury. But with their indolence and luxury, nothing but the public treaſure will be able to ſatisfy their demands.

We muſt not be ſurpriſed to ſee their ſuffrages given for money. It is impoſſible to make great largeſſes to the people without great extortion: and to compaſs this, the ſtate muſt be ſubverted. The greater the advantages they ſeem to derive from their liberty, the nearer they approach towards the critical moment of loſing it. Petty tyrants ariſe, who have all the vices of a ſingle tyrant. The ſmall remains of liberty ſoon become unſupportable; a ſingle tyrant ſtarts up, and the people are ſtripped of every thing, even of the profits of their corruption.

Democracy hath therefore two exceſſes to avoid, the ſpirit of inequality, which leads to ariſtocracy or monarchy; and the ſpirit of extreme equality, which leads to deſpotic power, as the latter is compleated by conqueſt.

True it is, that thoſe who corrupted the Greek republics, did not always become tyrants. This was becauſe they had a greater paſſion for eloquence than for the military art. Beſides there reigned an implacable hatred in the breaſts of the Greeks againſt thoſe who ſubverted a republican government; and for this reaſon anarchy degenerated into annihilation, inſtead of being changed into tyranny.

But

But Syracuſe, being ſituated in the midſt of a great number of petty ſtates, whoſe government had been changed from oligarchy to tyranny (c); and being governed by a ſenate * ſcarce ever mentioned in hiſtory, underwent ſuch miſeries as are the conſequence of a more than ordinary corruption. This city ever a prey to licentiouſneſs † or oppreſſion, equally labouring under the ſudden and alternate ſucceſſion of liberty and ſervitude, and notwithſtanding her external ſtrength, conſtantly determined to a revolution by the leaſt foreign power: This city, I ſay, had in her boſom an immenſe multitude of people, whoſe fate it was to have always this cruel alternative, either of chuſing a tyrant to govern them, or of acting the tyrant themſelves.

Book VIII. Chap. 3.

(c) See Plutarch in the lives of Timoleon and Dio.

CHAP. III.

Of the Spirit of extreme Equality.

AS diſtant as heaven is from earth, ſo is the true ſpirit of equality from that of extreme equality. The former does not imply that every body ſhould command, or that no one ſhould be commanded, but that we obey or command our equals. It endeavours not to ſhake off the autho-

* It was that of the ſix hundred, of whom mention is made by Diodorus.

† Upon the expulſion of the tyrants, they made citizens of ſtrangers and mercenary troops, which gave riſe to civil wars. *Ariſtot. Polit. lib.* 5. *cap.* 3. the people having been the cauſe of the victory over the Athenians, the republic was changed, *ibid. cap.* 4. The paſſion of two young magiſtrates, one of whom carried off the other's boy, and in revenge the other debauched his wife, was attended with a change in the form of this republic. *ibid. lib.* 7. *cap.* 4.

Book VIII. Chap. 4.

rity of a maſter, but that its maſters ſhould be none but its equals

In the ſtate of nature indeed, all men are born equal; but they cannot continue in this equality. Society makes them loſe it, and they recover it only by the protection of the laws.

Such is the difference between a well regulated democracy, and one that is not ſo, that in the former men are equal only as citizens, but in the latter they are equal alſo as magiſtrates, as ſenators, as judges, as fathers, as huſbands, or as maſters.

The natural place of virtue is near to liberty; but it is not nearer to exceſſive liberty than to ſervitude.

CHAP. IV.

Particular Cauſe of the Corruption of the People.

GREAT ſucceſs, eſpecially when chiefly owing to the people, intoxicates them to ſuch a degree that it is impoſſible to contain them within bounds. Jealous of their magiſtrates, they ſoon become jealous likewiſe of the magiſtracy; enemies to thoſe who govern, they ſoon prove enemies alſo to the conſtitution. Thus it was that the victory over the Perſians in the ſtraits of Salamis corrupted the republic of Athens (d); and thus the defeat of the Athenians ruined the republic of Syracuſe (e).

(d) Ariſtot. Polit. lib. 5. cap. 4.
(e) Ibid.

Marſeilles never experienced thoſe great tranſitions from lowneſs to grandeur; this was owing to the prudent conduct of that republic, who always preſerved her principles.

CHAP.

CHAP. V.

Of the Corruption of the Principle of Ariſtocracy.

ARiſtocracy is corrupted if the power of the nobles becomes arbitrary: when this is the caſe, there can no longer be any virtue either in the governors or the governed.

If the reigning families obſerve the laws, it is a monarchy with ſeveral monarchs, and in its own nature one of the moſt excellent; for almoſt all theſe monarchs are tied down by the laws. But when they do not obſerve them, it is a deſpotic ſtate ſwayed by a great many deſpotic princes.

In the latter caſe, the republic conſiſts only in the nobles. The body governing is the republic; and the body governed is the deſpotic ſtate; which forms two of the moſt heterogeneous bodies in the world.

The extremity of corruption is when the power of the nobles becomes hereditary *; for then they can hardly have any moderation. If they are only a few, their power is greater, but their ſecurity leſs; if they are a larger number, their power is leſs, and their ſecurity greater: inſomuch that power goes on increaſing, and ſecurity diminiſhing, up to the very deſpotic prince who is encircled with exceſs of power and danger.

The great number therefore of nobles in an hereditary ariſtocracy renders the government leſs violent: but as there is leſs virtue, they fall into a ſpirit of ſupineneſs and negligence, by which the ſtate loſes all its ſtrength and activity †.

* The ariſtocracy is changed into an oligarchy.

† Venice is one of thoſe republics that has enacted the beſt laws for correcting the inconveniencies of an hereditary ariſtocracy.

BOOK VIII. Chap. 6.

An ariſtocracy may maintain the full vigor of its conſtitution, if the laws be ſuch as are apt to render the nobles more ſenſible of the perils and fatigues, than of the pleaſure of command: and if the government be in ſuch a ſituation as to have ſomething to dread, while ſecurity ſhelters under its protection, and uncertainty threatens from abroad.

As a certain kind of confidence forms the glory and ſtability of monarchies, republics on the contrary muſt have ſomething to apprehend †. A fear of the Perſians ſupported the laws of Greece. Carthage and Rome were alarmed, and ſtrengthened by each other. Strange, that the greater ſecurity thoſe ſtates enjoyed, the more, like ſtagnated waters, they were ſubject to corruption!

CHAP. VI.

Of the Corruption of the Principle of Monarchy.

AS democracies are ſubverted when the people deſpoil the ſenate, the magiſtrates, and judges of their functions; ſo monarchies are corrupted when the prince inſenſibly deprives ſocieties or cities of their privileges. In the former caſe the multitude uſurp the power, in the latter it is uſurped by a ſingle perſon.

"*The deſtruction of the Dynaſties of Tſin and Soüi,*" SAYS A CHINESE AUTHOR, "*was owing to this; the princes inſtead of confining*

† Juſtin attributes the extinction of Athenian virtue to the death of Epaminondas. Having no farther emulation, they ſpent their revenues in feaſts, *frequentius cœnam, quam caſtra viſentes.* Then it was that the Macedonians emerged from obſcurity. l. 6.

"*them-*

" *themſelves like their anceſtors, to a general inſpec-* Book
" *tion, the only one worthy of a ſovereign, wanted to* VIII.
" *govern every thing immediately by themſelves* (f)." Chap. 8.

The Chineſe author gives us in this inſtance, the cauſe of the corruption of almoſt all monarchies.

(f) Compilement of works made under the *Mings*, related by father Du Halde.

Monarchy is deſtroyed, when a prince thinks he ſhews a greater exertion of power in changing than in conforming to, the order of things; when he deprives ſome of his ſubjects of their hereditary employments to beſtow them arbitrarily upon others; and when he is fonder of being guided by fancy than judgment.

Again, it is deſtroyed, when the prince directing every thing entirely to himſelf, calls the ſtate to his capital, the capital to his court, and the court to his own perſon.

It is deſtroyed in fine, when the prince miſtakes his authority, his ſituation, and the love of his people; and when he is not fully perſuaded that a monarch ought to think himſelf ſecure, as a deſpotic prince ought to think himſelf in danger.

CHAP. VII.

The ſame Subject continued.

THE principle of monarchy is corrupted, when the firſt dignities are marks of the firſt ſervitude, when the great men are deprived of public reſpect, and rendered the low tools of arbitrary power.

It is ſtill more corrupted, when honor is ſet up in contradiction to honors, and when men are capa-

BOOK VIII. Chap. 8.

ble of being loaded at the very ſame time with infamy * and with dignities.

It is corrupted when the prince changes his juſtice into ſeverity; when he puts, like the Roman emperors, a Meduſa's head on his breaſt †; and when he aſſumes that menacing and terrible air which Commodus ordered to be given to his ſtatues (g).

(g) Herodian.

Again, it is corrupted, when mean and abject ſouls grow vain of the pomp attending their ſervitude; and imagine that the motive which induces them to be entirely devoted to their prince, exempts them from all duty to their country.

But if it be true, (and indeed the experience of all ages has ſhewn it) that in proportion as the power of the monarch becomes boundleſs and immenſe, his ſecurity diminiſhes; is the corrupting of this power, and the altering of its very nature, a leſs crime than that of high treaſon againſt the prince?

* Under the reign of Tiberius ſtatues were erected to, and triumphal ornaments conferred on, informers; which debaſed theſe honors to ſuch a degree, that thoſe who had really merited them diſdained to accept of them. *Frag. of Dio, book* 58. taken from *the extract of virtues and vices*, by Conſtantine Porphyrog. See in Tacitus in what manner *Nero* on the diſcovery and puniſhment of a pretended conſpiracy, beſtowed triumphal ornaments on Petronius Turpilianus, Nerva, and Tigellinus. *Annal book* 14. See likewiſe how the generals refuſed to ſerve, becauſe they contemned the military honors, *pervulgatis triumphi inſignibus*, Tacit Annal. book 13.

† In this ſtate the Prince knew extremely well the principle of his government.

CHAP.

CHAP. VIII.

Danger of the Corruption of the Principle of monarchical Government.

THE danger is not when the ſtate paſſes from one moderate to another moderate government, as from a republic to a monarchy, or from a monarchy to a republic; but when it precipitates from a moderate to a deſpotic government. Book VIII. Chap. 8. and 9.

Moſt of the European nations are ſtill governed by the principles of morality. But if from a long abuſe of power, or the fury of conqueſt, deſpotic ſway ſhould prevail to a certain degree; neither morals nor climate would be able to withſtand its baleful influence: and then human nature would be expoſed for ſome time at leaſt, even in this beautiful part of the world, to the inſults with which ſhe has been abuſed in the other three.

CHAP. IX.

How ready the Nobility are to defend the Throne.

THE Engliſh nobility buried themſelves with Charles the firſt, under the ruins of the throne; and before that time, when Philip the ſecond endeavoured to tempt the French with the allurement of liberty, the crown was conſtantly ſupported by a nobility who think it an honor to obey a king, but conſider it as the loweſt diſgrace to ſhare the power with the people.

The houſe of Auſtria has ever uſed her endeavours to oppreſs the Hungarian nobility; little thinking

BOOK VIII. Chap. 9.

thinking how ſerviceable that very nobility would be one day to her. She would fain have drained their country of money, of which they had no plenty; but took no notice of the men, with whom it abounded. When princes combined to diſmember her dominions, the ſeveral parts of that monarchy fell motionleſs, as it were, one upon another. No life was then to be ſeen but in thoſe very nobles, who reſenting the affronts offered to the ſovereign, and forgetting the injuries done to themſelves, took up arms to avenge her cauſe, and conſidered it as the higheſt glory bravely to die and to forgive.

CHAP. X.

Of the Corruption of the Principle of deſpotic Government.

THE principle of deſpotic government is ſubject to a continual corruption, becauſe it is even in its nature corrupt. Other governments are deſtroyed by particular accidents, which do violence to the principles of each conſtitution; this is ruined by its own intrinſic imperfections, when ſome accidental cauſes do not prevent the corrupting of its principles. It maintains itſelf therefore only when circumſtances drawn from the climate, religion, ſituation, or genius of the people, oblige it to conform to order, and to admit of ſome rule. By theſe things its nature is forced without being changed; its ferocity remains; and it is made tame and tractable only for a time.

CHAP.

CHAP. XI.

Natural Effects of the Goodneſs and Corruption of the Principles of Government.

WHEN once the principles of government are corrupted, the very beſt laws become bad, and turn againſt the ſtate: but when the principles are ſound, even bad laws have the ſame effect as good; the force of the principle draws every thing to it. Book VIII. Chap. 11.

The inhabitants of Crete uſed a very ſingular method, to keep the principal magiſtrates dependent on the laws; which was that of *Inſurrection*. Part of the citizens roſe up in arms (h), put the magiſtrates to flight, and obliged them to return to a private life. This was ſuppoſed to be done in conſequence of the law. One would have imagined that an inſtitution of this nature, which eſtabliſhed ſedition, to hinder the abuſe of power, would have ſubverted any republic whatſoever; and yet it did not ſubvert that of Crete. The reaſon is this *.

(h) Ariſtot. Polit. book 2. chap. 10.

When the ancients would expreſs a people that had the ſtrongeſt affection for their country, they were ſure to mention the inhabitants of Crete: *Our country*, ſaid Plato (i) *a name ſo dear to the Cretans*. They called it by a name which ſignifies the love of a mother for her children (k). Now the love of our country ſets every thing to right.

(i) Repub. lib. 9.

(k) Plutarch's morals, treatiſe *whether a man advanced in years ought to meddle with public affairs.*

The laws of Poland have likewiſe their *Inſurrection*: But the inconveniences thence ariſing plainly

* They always united immediately againſt foreign enemies, which was called *Syncretiſm*. Plut. Mor. p. 88.

Book VIII. Chap. 11.

plainly ſhew that the people of Crete alone were capable of uſing ſuch a remedy with ſucceſs.

The gymnic exerciſes eſtabliſhed amongſt the Greeks, had the ſame dependance on the goodneſs of the principle of government. "*It was the La-*
(l) Repub. lib. 5. "*cedæmonians and Cretans*, ſaid Plato (l), *that opened* "*thoſe celebrated academies which gave them ſo* "*eminent a rank in the world. Modeſty at firſt* "*was alarmed; but it yielded to the public utility.*" In Plato's time theſe inſtitutions were admirable †; as they had a relation to a very important object, which was the military art. But when virtue fled from Greece, the military art was deſtroyed by theſe inſtitutions; people appeared then on the arena, not for improvement, but for debauch *.

(m) Plutarch's morals, in the treatiſe entitled *Queſtions concerning the affairs of the Romans.*

Plutarch informs us (m) that the Romans in his time were of opinion, that thoſe games had been the principal cauſe of the ſlavery, into which the Greeks were fallen. On the contrary, it was the ſlavery of the Greeks that corrupted thoſe exerciſes. In Plutarch's time (n), their fighting naked in the parks, and their wreſtling, infected the young people with the ſpirit of cowardice, inclined them to infamous paſſions, and made them mere dancers. But under Epaminondas the exerciſe of

(n) Ibid.

† The Gymnic art was divided into two parts, *dancing* and *wreſtling*. In Crete they had the armed dances of the Curetes; at Sparta they had thoſe of Caſtor and Pollux; at Athens the armed dances of Pallas, which were extremely proper for thoſe that were not yet of age for military ſervice. Wreſtling is the image of war, ſaid Plato, *of laws book* 7. He commends antiquity for having eſtabliſhed only two dances, the pacific and the Pyrrhic. See how the latter dance was applied to the military art, *Plato ibid.*

* . . . . . *Aut libidinoſæ*
Ledæas Lacedæmonis palæſtras. Mart. lib. 4. ep. 55.

wreſtling

wreſtling made the Thebans win the famous battle of Leuctra (°).

Book VIII. Chap. 12.

There are very few laws which are not good, while the ſtate retains its principles: here I may apply what Epicurus ſaid of riches; *it is not the liquor, but the veſſel, that is corrupted.*

(°) Plutarch's morals, *Table propoſitions*, book 2.

CHAP. XII.

The ſame Subject continued.

IN Rome the judges were choſen at firſt from the order of ſenators. This privilege the Gracchi transferred to the knights: Druſus gave it to the ſenators and knights; Sylla to the ſenators only; Cotta to the ſenators, knights, and public treaſurers; Cæſar excluded the latter; Antony made decuries of ſenators, knights, and centurions.

When once a republic is corrupted, there is no poſſibility of remedying any of the growing evils, but by removing the coruption and reſtoring its loſt principles: every other correction is either uſeleſs or a new evil. While Rome preſerved her principles intire, the judicial power might without any abuſe be lodged in the hands of ſenators: but as ſoon as this city became corrupt, to whatſoever body that power was transferred, whether to the ſenate, to the knights, to the treaſurers, to two of thoſe bodies, to all three together, or to any other; matters ſtill went wrong. The knights had no more virtue than the ſenate, the treaſurers no more than the knights, and theſe as little as the centurions.

After the people of Rome had obtained the privilege of ſharing the magiſtracy with the Patricians, it

Book VIII. Chap. 13.

it was natural to think that their flatterers would immediately become arbiters of the government. But no ſuch thing ever happened.—It was obſervable that the very people who had rendered the plebeians capable of public offices, ever fixed their choice upon the patricians. Becauſe they were virtuous, they were magnanimous; and becauſe they were free, they had a contempt of power. But when their morals were corrupted, the more power they were poſſeſſed of, the leſs prudent was their conduct; till at length upon becoming their own tyrants and ſlaves, they loſt the ſtrength of liberty to fall into the weakneſs and impotency of licentiouſneſs.

CHAP. XIII.

The Effect of an Oath *among virtuous People.*

(p) Book 1.

THERE is no nation, ſays Livi (p), that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer reſpected.

Such was the influence of an *Oath* among thoſe people, that nothing bound them ſtronger to the laws. They often did more for the obſervance of an oath, than they would ever have performed for the thirſt of glory or for the love of their country.

When Quintus Cincinnatus the conſul wanted to raiſe an army in the city againſt the *Æqui* and the *Volſci*, the tribunes oppoſed him. "*Well*, ſaid "he, *let all thoſe who have taken an oath to the* "*Conſul of the preceding year, march under my ban-*"*ner* (q)." In vain did the tribunes cry out that this oath was no longer binding; and that when they

(q) Livy Book 3.

they took it, Quintus was but a private perſon: the people were more religious than thoſe who pretended to direct them; they would not liſten to the diſtinctions or equivocations of the tribunes. Book VIII. Chap. 14.

When the ſame people thought of retiring to the *Sacred Mount*, they felt ſome remorſe from the oath they had taken to the Conſuls, that they would follow them into the field (r). They entered then into a deſign of killing the Conſuls; but dropped it, when they were given to underſtand that their oath would ſtill be binding. Now it is eaſy to judge of the notion they entertained of the violation of an oath, from the crimes they intended to commit. (r) Ibid. Book 3.

After the battle of Cannæ, the people were ſeized with ſuch a panic, that they would fain have retired to Sicily. But Scipio having prevailed upon them to ſwear they would not ſtir from Rome, the fear of violating this oath ſurpaſſed all other apprehenſions. Rome was a ſhip held by two anchors, religion and morality, in the midſt of a furious tempeſt.

CHAP. XIV.

How the ſmalleſt Change of the Conſtitution is attended with the Ruin of its Principles.

ARISTOTLE mentions the city of Carthage as a well regulated republic. Polybius tells us *, that there was this inconveniency at Carthage in the ſecond Punic war, that the ſenate had

* About a hundred years after.

loſt

BOOK VIII. Chap. 15.

loſt almoſt all their authority. We are informed by Livy, that when Hannibal returned to Carthage, he found that the magiſtrates and the principal citizens had abuſed their power, and converted the public revenues to their private emolument. The virtue therefore of the magiſtrates, and the authority of the ſenate, both fell at the ſame time; and all was owing to the ſame cauſe.

Every one knows the wonderful effects of the cenſorſhip among the Romans. There was a time when it grew burthenſome; but ſtill it was ſupported, becauſe there was more luxury than corruption. Claudius (f) weakened its authority, by which means the corruption became greater than the luxury, and the cenſorſhip dwindled away of itſelf *. After various interruptions and reſumptions, it was intirely laid aſide till it became altogether uſeleſs, that is, till the reigns of Auguſtus and Claudius.

(f) See Book 11th chap. 12th

CHAP. XV.

Sure Methods of preſerving the three Principles.

I Shall not be able to make myſelf rightly underſtood, till the reader has peruſed the four following chapters.

* See Dio, book 38. Cicero's life in Plutarch, Cicero to Atticus, Book 4th, Letter 10 and 15. Aſconius on Cicero de divinatione.

CHAP.

CHAP. XVI.

Distinctive Properties of a Republic.

IT is natural for a republic to have only a small territory; otherwise it cannot long subsist. In an extensive republic there are men of large fortunes, and consequently of less moderation; there are trusts too considerable to be placed in any single subject; he has interests of his own; he soon begins to think that he may be happy and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. BOOK VIII. Chap. 16.

In an extensive republic the public good is sacrificed to a thousand private views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is more obvious, better understood, and more within the reach of every citizen; abuses have less extent, and of course are less protected.

The long duration of the republic of Sparta was owing to her having continued in the same extent of territory after all her wars. The sole aim of Sparta was liberty; and the sole advantage of her liberty, glory.

It was the spirit of the Greek republics to be as contented with their territories, as with their laws. Athens was first fired with ambition and gave it to Lacedæmon; but it was an ambition rather of commanding a free people, than of governing slaves; rather of directing than of breaking the union. All was lost upon the starting up of

Book VIII. Chap. 17.

monarchy, a government whoſe ſpirit is more turned to increaſe of dominion.

Excepting particular circumſtances *, it is difficult for any other than a republican government to ſubſiſt long in a ſingle town. A prince of ſo petty a ſtate would naturally endeavour to oppreſs his ſubjects, becauſe his power would be great, while the means of enjoying it or of cauſing it to be reſpected, would be inconſiderable. The conſequence is, he would trample upon his people. On the other hand, ſuch a prince might be eaſily cruſhed by a foreign or even a domeſtic force; the people might every inſtant unite and riſe up againſt him. Now as ſoon as the ſovereign of a ſingle town is expelled, the quarrel is over; but if he has many towns, it only begins.

CHAP. XVII.

Diſtinctive Properties of a Monarchy.

A Monarchical ſtate ought to be of a moderate extent. Were it ſmall, it would form itſelf into a republic: were it very large, the nobility, poſſeſſed of great eſtates, far from the eye of the prince, with a private court of their own, and ſecure moreover from ſudden executions by the laws and manners of the country, ſuch a nobility, I ſay, might throw off their allegiance, having nothing to fear from too ſlow and too diſtant a puniſhment.

* As when a petty ſovereign ſupports himſelf betwixt two great powers by means of their mutual jealouſy; but then he has only a precarious exiſtence.

Thus

Thus Charlemain had ſcarce founded his empire when he was obliged to divide it; whether the governors of the provinces refuſed to obey; or whether, in order to keep them more under ſubjection, there was a neceſſity of parcelling the empire into ſeveral kingdoms. BOOK VIII. Chap. 18.

After the deceaſe of Alexander his empire was divided. How was it poſſible for thoſe Greek and Macedonian chiefs, who were each of them free and independent, or commanders at leaſt of the victorious bands diſperſed throughout that vaſt extent of conquered land, how was it poſſible, I ſay, for them to obey?

Attila's empire was diſſolved ſoon after his death; ſuch a number of kings, who were no longer under reſtraint, could not reſume their fetters.

The ſudden eſtabliſhment of unlimited power is a remedy, which in thoſe caſes may prevent a diſſolution: but how dreadful the remedy, which after the inlargement of dominion, opens a new ſcene of miſery!

The rivers haſten to mingle their waters with the ſea; and monarchies loſe themſelves in deſpotic power.

CHAP. XVIII.

Particular caſe of the Spaniſh Monarchy.

LET not the example of Spain be produced againſt me; it rather proves what I affirm. To preſerve America ſhe did what even deſpotic power itſelf does not attempt, ſhe deſtroyed the inhabitants. To preſerve her colony, ſhe was obliged

Book VIII. Chap. 19. and 20.

liged to keep it dependent even for its subsistence.

In the Netherlands, she essayed to render herself arbitrary; and as soon as she abandoned the attempt, her perplexity increased. On the one hand the Walloons would not be governed by Spaniards; and on the other, the Spanish soldiers refused to submit to Walloon officers (c).

(c) See the history of the United Provinces, by Monsr. Le Clerc.

In Italy she maintained her ground, merely by exhausting herself and by enriching that country. For those who would have been pleased to have got rid of the king of Spain, were not in a humour to refuse his gold.

CHAP. XIX.

Distinctive Properties of a despotic Government.

A Large empire supposes a despotic authority in the person who governs. It is necessary that the quickness of the prince's resolutions should supply the distance of the places they are sent to; that fear should prevent the remissness of the distant governor or magistrate; that the law should be derived from a single person, and should shift continually, according to the accidents which incessantly multiply in a state in proportion to its extent.

CHAP. XX.

Consequence of the preceding Chapters.

IF it be therefore the natural property of small states to be governed as a republic, of middling ones to be subject to a monarch, and of large empires

pires to be ſwayed by a deſpotic prince; the conſequence is, that in order to preſerve the principles of the eſtabliſhed government, the ſtate muſt be ſupported in the extent it has acquired, and that the ſpirit of this ſtate will alter in proportion as it contracts or extends its limits.

CHAP. XXI.

Of the Empire of China.

BEFORE I conclude this book, I ſhall anſwer an objection that may be made to the foregoing doctrine.

Our miſſionaries inform us that the government of the vaſt empire of China is admirable, and that it has a proper mixture of fear, honor, and virtue. Conſequently I muſt have given an idle diſtinction, in eſtabliſhing the principles of the three governments.

But I cannot conceive what this honor can be among a people, who act only through fear of being baſtinaded *.

Again, our merchants are far from giving us any ſuch accounts of the virtue ſo much talked of by the miſſionaries; we need only conſult them in relation to the robberies and extortions of the Mandarines (e). I likewiſe appeal to another unexceptionable witneſs, the great lord Anſon.

(e) Among others, *De Lange*'s relation.

Beſides, Father *Parennin*'s letters concerning the emperor's proceedings againſt ſome of the princes of the blood (f) who had incurred his diſpleaſure by their converſion, plainly ſhew us a ſettled plan

(f) Of the Family of Sournama, Edifying Letters, 18th collection.

* It is the cudgel that governs China, ſays Father du Halde.

BOOK VIII. Chap. 21.

of tyranny, and barbarities committed by rule, that is in cold blood.

We have likewiſe Monſieur *de Mairan*'s, and the ſame father *Parennin*'s letters on the government of China. I find therefore that after a few proper queſtions and anſwers, the whole myſtery is unfolded.

Might not our miſſionaries have been deceived by an appearance of order? Might not they have been ſtruck with that conſtant exerciſe of a ſingle perſon's will, an exerciſe by which they themſelves are governed, and which they are ſo pleaſed to find in the courts of the Indian princes; becauſe as they go thither only in order to introduce great changes, it is much eaſier to perſuade thoſe princes that there are no bounds to their power, than to convince the people that there are none to their ſubmiſſion *.

In fine, there is frequently ſome kind of truth even in errors themſelves. It may be owing to particular, and perhaps very extraordinary circumſtances, that the Chineſe government is not ſo corrupt as one might naturally expect. The climate and ſome other phyſical caſes may, in that country, have had ſo ſtrong an influence on their morals, as in ſome meaſure to produce wonders.

The climate of China is ſurprizingly favourable to the propagation of the human ſpecies. The women are the moſt prolific in the whole world. The moſt barbarous tyranny can put no ſtop to

* See in Father Du Halde how the miſſionaries availed themſelves of the authority of Canhi to ſilence the Mandarines, who conſtantly declared, that by the laws of the country, no foreign worſhip could be eſtabliſhed in the empire.

the

the progreſs of propagation. The prince cannot ſay there like Pharaoh, *Let us deal wiſely with them leſt they multiply*. He would be rather reduced to Nero's wiſh, that mankind had all but one head. In ſpite of tyranny, China by the force of its climate will be ever populous, and triumph over the tyrannical oppreſſor.

China like all other countries, that live chiefly upon rice, is ſubject to frequent famines. When the people are ready to ſtarve, they diſperſe in order to ſeek for nouriſhment; in conſequence of which, gangs of robbers are formed on every ſide. Moſt of them are extirpated in their very infancy; others ſwell, and are likewiſe ſuppreſſed. And yet in ſo great a number of ſuch diſtant provinces, ſome band or other may happen to meet with ſucceſs. In that caſe they maintain their ground, ſtrengthen their party, form themſelves into a military body, march up to the capital, and place their leader on the throne.

From the very nature of things, a bad adminiſtration is here immediately puniſhed. The want of ſubſiſtence in ſo populous a country, produces ſudden diſorders. The reaſon why the redreſs of abuſes in other countries is attended with ſuch difficulty, is becauſe their effects are not immediately felt; the prince is not informed in ſo ſudden and ſenſible a manner as in China.

The emperor of China is not taught like our princes, that if he governs ill, he will be leſs happy in the other life, leſs powerful and leſs opulent in this. He knows that if his government be not juſt, he will be ſtript both of empire and life.

As China grows every day more populous notwithſtanding the expoſing of children *, the inhabitants are inceſſantly employed in tilling the lands for their ſubſiſtence. This requires a very extraordinary attention in the government. It is their perpetual concern that every man ſhould have it in his power to work, without the apprehenſion of being deprived of the fruits of his labour. Conſequently this is not ſo much a civil as a domeſtic government.

Such has been the origin of thoſe regulations which have been ſo greatly extolled. They wanted to make the laws reign in conjunction with deſpotic power; but whatever is joined to the latter loſes all its force. In vain did this arbitrary ſway, labouring under its own inconveniences, deſire to be fettered; it armed itſelf with its chains, and is become ſtill more terrible.

China is therefore a deſpotic ſtate, whoſe principle is fear. Perhaps in the earlieſt dynaſties, when the empire had not ſo large an extent, the government might have deviated a little from this ſpirit: but the caſe is otherwiſe at preſent.

* See the order of Tſongtou, for tilling the land, in the edifying letters, 21ſt collect.

BOOK IX.

Of Laws in the relation they bear to a defenſive Force.

CHAP. I.

In what manner Republics provide for their Safety.

IF a republic be ſmall, it is deſtroyed by a foreign force; if it be large, it is ruined by an internal imperfection.

To this twofold inconveniency Democracies and Ariſtocracies are equally liable, whether they be good or bad. The evil is in the very thing itſelf; and no form can redreſs it.

It is therefore very probable that mankind would have been, at length, obliged to live conſtantly under the government of a ſingle perſon, had they not contrived a kind of conſtitution that has all the internal advantages of a republican, together with the external force of a monarchical, government. I mean a confederate republic.

This form of government is a convention by which ſeveral petty ſtates agree to become members of a larger one, which they intend to eſtabliſh. It is a kind of aſſemblage of ſocieties, that conſtitute a new one, capable of increaſing by means of farther aſſociations, till they arrive to ſuch a degree of

BOOK IX. Chap. 1.

of power, as to be able to provide for the ſecurity of the whole body.

It was theſe aſſociations that ſo long contributed to the proſperity of Greece. By theſe the Romans attacked the whole globe, and by theſe alone the whole globe withſtood them: for when Rome was arrived to her higheſt pitch of grandeur, it was the aſſociations beyond the Danube and the Rhine, aſſociations formed by the terror of her arms, that enabled the Barbarians to reſiſt her.

From hence it proceeds that Holland*, Germany, and the Swiſs Cantons, are conſidered in Europe as perpetual republics.

The aſſociations of cities were formerly more neceſſary than in our times. A weak defenceleſs town was expoſed to greater danger. By conqueſt it was deprived not only of the executive and legiſlative power, as at preſent, but moreover of all human property†.

A republic of this kind, able to withſtand an external force, may ſupport itſelf without any internal corruption; the form of this ſociety prevents all manner of inconveniencies.

If a ſingle member ſhould attempt to uſurp the ſupreme power, he could not be ſuppoſed to have an equal authority and credit in all the confederate ſtates. Were he to have too great an influence over one, this would alarm the reſt; were he to ſubdue a part, that which would ſtill remain free, might oppoſe him with forces independent of thoſe which

* It is compoſed of about fifty different republics all different from one another. *State of the United Provinces* by M. Janiſſon.

† Civil liberty, goods, wives, children, temples, and even burying places.

he had uſurped, and overpower him before he could be ſettled in his uſurpation. BOOK IX. Chap. 2.

Should a popular inſurrection happen in one of the confederate ſtates, the others are able to quell it. Should abuſes creep into one part, they are reformed by thoſe that remain ſound. The ſtate may be deſtroyed on one ſide, and not on the other; the confederacy may be diſſolved, and the confederates preſerve their ſovereignty.

As this government is compoſed of petty republics, it enjoys the internal happineſs of each; and with regard to its external ſituation, by means of the aſſociation, it poſſeſſeth all the advantages of large monarchies.

CHAP. II.

That a confederate Government ought to be compoſed of States of the ſame Nature, eſpecially of the republican Kind.

THE Canaanites were deſtoyed, by reaſon they were petty monarchies, that had no union nor confederacy for their common defence: And indeed, a confederacy is not agreeable to the nature of petty monarchies.

As the confederate republic of Germany conſiſts of free cities, and of petty ſtates ſubject to different princes, experience ſhews us, that it is much more imperfect than that of Holland and Swiſſerland.

The ſpirit of monarchy is war and enlargement of dominion: peace and moderation is the ſpirit of a republic. Theſe two kinds of government cannot naturally ſubſiſt in a confederate republic.

Thus

BOOK IX. CHAP. 3.

Thus we obſerve in the Roman hiſtory, that when the Veientes had choſen a king, they were immediately abandoned by all the other petty republics of Tuſcany. Greece was undone as ſoon as the kings of Macedon obtained a ſeat among the Amphictyons.

The confederate republic of Germany, compoſed of princes and free towns, ſubſiſts by means of a chief, who is, in ſome reſpects, the magiſtrate of the union, in others, the monarch.

CHAP. III.

Other Requiſites in a confederate Republic.

IN the republic of Holland one province cannot conclude an alliance without the conſent of the others. This law, which is an excellent one, and even neceſſary in a confederate republic, is wanting in the Germanic conſtitution, where it would prevent the misfortunes that may happen to the whole confederacy, through the imprudence, ambition, or avarice of a ſingle member. A republic united by a political confederacy, has given itſelf intirely up, and has nothing more to reſign.

It is difficult for the united ſtates, to be all of equal power and extent. The Lycian (a) republic was an aſſociation of twenty-three towns; the large ones had three votes in the common council, the middling ones two, and the ſmall towns one. The Dutch republic conſiſts of ſeven provinces of different extent of territory, which have each one voice.

(a) Strabo, lib. 14.

The cities of Lycia (b) contributed to the expences of the ſtate, according to the proportion of ſuffrages. The provinces of the united Netherlands cannot

(b) Ibid.

cannot follow this proportion; they must be directed by that of their power. Book VIII. Chap. 4.

In Lycia (c) the judges and town magistrates were elected by the common council, and according to the proportion already mentioned. In the republic of Holland they are not chosen by the common council, but each town names its magistrates. Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia. (c) Ibid.

CHAP. IV.

In what manner despotic Governments provide for their security.

As republics provide for their security by uniting, despotic governments do it by separating, and by keeping themselves as it were, single. They sacrifice a part of the country; and by ravaging and desolating the frontiers, they render the heart of the empire inaccessible.

It is a received axiom in geometry, that the greater the extent of bodies, the more their circumference is relatively small. This practice therefore of laying the frontiers waste, is more tolerable in large than in middling states.

A despotic government does all the mischief to itself that could be committed by a cruel enemy, whose arms it were unable to resist.

It preserves itself likewise by another kind of separation, which is by putting the most distant provinces into the hands of a great vassal. The Mogul, the king of Persia, and the emperors of China, have their feudatories; and the Turks have found their account in putting the Tartars, the Moldavians,

Moldavians, the Walachians, and formerly the Tranſilvanians, between themſelves and their enemies.

CHAP. V.

In what Manner a Monarchical Government provides for its Security.

A Monarchy never deſtroys itſelf like a deſpotic government. But a kingdom of a moderate extent is liable to ſudden invaſions: it muſt therefore have fortreſſes to defend its frontiers; and troops to garriſon thoſe fortreſſes. The leaſt ſpot of ground is diſputed with military ſkill and reſolution. Deſpotic ſtates make incurſions againſt one another; it is monarchies only that wage war.

Fortreſſes are proper for monarchies; deſpotic governments are afraid of them. They dare not intruſt their officers with ſuch a command, as none of them have any affection for the prince or his government.

CHAP. VI.

Of the defenſive Force of States in general.

TO preſerve a ſtate in its due force, it muſt have ſuch an extent, as to admit of a proportion between the celerity with which it may be invaded, and that with which it may defeat the invaſion. As an invader may appear on every ſide, it is requiſite that the ſtate ſhould be able to make on every ſide its defence; conſequently it ſhould be of a moderate extent, proportioned to the degree of velocity that nature has given to man, to enable him to move from one place to another.

France

France and Spain are exactly of a proper extent. They have so easy a communication for their forces, as to be able to convey them immediately to what part they have a mind; the armies unite and pass with rapidity from one frontier to another, without any apprehension of such difficulties as require time to remove.

It is extremely happy for France, that the capital stands near to the different frontiers in proportion to their weakness; and the prince has a better view of each part of his country according as it is more exposed.

But when a vast empire, like Persia, is attacked, it is several months before the troops are assembled in a body; and then they are not able to make such forced marches for that space of time, as they could for fifteen days. Should the army on the frontiers be defeated, it is soon dispersed, because there is no neighbouring place of retreat. The victor, meeting with no resistance, advances with all expedition, sits down before the capital, and lays siege to it, when there is scarce time sufficient to summon the governors of the provinces to its relief. Those who foresee an approaching revolution, hasten it by their disobedience. For men whose fidelity is intirely owing to the danger of punishment, are easily corrupted as soon as it becomes distant; their aim is their own private interest. The empire is subverted, the capital taken, and the conqueror disputes the several provinces with the governors.

The real power of a prince does not consist so much in the facility he meets with in making conquests, as in the difficulty an enemy finds in attacking

Book XI. Chap. 7.

ing him, and, if I may ſo ſpeak, in the immutability of his condition. But the increaſe of territory obliges a government to lay itſelf more open to an enemy.

As Monarchs therefore ought to be endued with wiſdom in order to increaſe their power, they ought likewiſe to have an equal ſhare of prudence to confine it within bounds. Upon removing the inconveniencies of too ſmall a territory, they ſhould have their eye conſtantly on the inconveniencies which attend its extent.

CHAP. VII.

A Reflexion.

THE enemies of a great prince, whoſe reign was protracted to an unuſual length, have very often accuſed him, rather, I believe, from their own fears, than upon any ſolid foundation, of having formed and carried on a project of univerſal monarchy. Had he attained his aim, nothing would have been more fatal to his ſubjects, to himſelf, to his family, and to all Europe. Heaven that knows our true intereſts, favoured him more by preventing the ſucceſs of his arms, than it could have done by crowning him with victories. Inſtead of raiſing him to be the only ſovereign in Europe, it made him happier by rendering him the moſt powerful.

The ſubjects of this prince, who in travelling abroad, are never affected but with what they have left at home; who on quitting their own habitations, look upon glory as their chief object, and in

in distant countries as an obstacle to their return; who disgust you even by their good qualities, because they are tainted with so much vanity; who are capable of supporting wounds, perils, and fatigues, but not of foregoing their pleasures; who are supremely fond of gaiety, and comfort themselves for the loss of a battle by a song upon the general; those subjects, I say, would never have the solidity requisite for an enterprize of this kind, which if defeated in one country, would be unsuccessful every where else; and if once unsuccessful, would be so for ever.

CHAP. VIII.

A particular Case in which the defensive Force of a State is inferior to the offensive.

IT was a saying of the lord of *Coucy* to king Charles V. *that the English are never weaker, nor easier overcome than in their own country.* The same was observed of the Romans; the same of the Carthaginians; and the same will happen to every power that sends armies to distant countries, in order to reunite by discipline and military force, those who are divided among themselves by political or civil interests. The state finds itself weakened by the disorder that still continues, and more so by the remedy.

The lord of *Coucy*'s maxim is an exception to the general rule, which disapproves of wars against distant countries. And this exception confirms likewise the rule, because it takes place only with regard to those by whom such wars are undertaken.

CHAP. IX.

Of the relative Force of States.

BOOK IX. Chap. 9.

ALL grandeur, force, and power are relative. Care therefore muſt be taken that in endeavouring to increaſe the real grandeur, the relative be not diminiſhed.

Under the reign of Lewis XIV. France was at its higheſt pitch of relative grandeur. Germany had not yet produced ſuch powerful princes as have ſince appeared in that country. Italy was in the ſame caſe. England and Scotland were not yet formed into one united kingdom. Arragon was not joined to Caſtile; the diſtant branches of the Spaniſh monarchy were weakened by it, and weakened it in their turn; and Muſcovy was as little known in Europe, as Crim Tartary.

CHAP. X.

Of the Weakneſs of neighbouring States.

WHenſoever a ſtate lies contiguous to another that happens to be in its decline, the former ought to take particular care not to precipitate the ruin of the latter, becauſe this is the happieſt ſituation imaginable; nothing being ſo convenient as for one prince to be near another, who receives for him all the rebuffs and inſults of fortune. And it ſeldom happens that by ſubduing ſuch a ſtate, the real power of the conqueror is as much increaſed, as the relative is diminiſhed.

BOOK X.

Of Laws in the Relation they bear to offenſive Force.

CHAP. I.

Of offenſive Force.

OFFENSIVE force is regulated by the law of nations, which is the political law of each country conſidered in its relation to every other. Book X. Chap. 1. and 2.

CHAP. II.

Of War.

THE life of governments is like that of man. The latter has a right to kill in caſe of natural defence; the former have a right to wage war for their own preſervation.

In the caſe of natural defence I have a right to kill, becauſe my life is in reſpect to me, what the life of my antagoniſt is to him: in the ſame manner a ſtate wages war, becauſe its preſervation is like that of any other being.

With individuals the right of natural defence does not imply a neceſſity of attacking. Inſtead of attacking they need only have recourſe to proper tribunals. They cannot therefore exerciſe this right of defence, but in ſudden caſes; when im-

mediate death would be the conſequence of waiting for the aſſiſtance of the law. But with ſtates the right of natural defence carries along with it ſometimes the neceſſity of attacking; as for inſtance, when one nation ſees that a continuance of peace will enable another to deſtroy her, and that to attack that nation inſtantly is the only way to prevent her own deſtruction.

From thence it follows, that petty ſtates have oftener a right to declare war than great ones, becauſe they are oftener in the caſe of being afraid of deſtruction.

The right therefore of war is derived from neceſſity and ſtrict juſtice. If thoſe who direct the conſcience or councils of princes do not abide by this maxim the conſequence is dreadful: when they proceed on arbitrary principles of glory, conveniency, and utility; torrents of blood muſt overſpread the earth.

But above all, let them not plead ſuch an idle pretext as the glory of the prince: his glory is nothing but pride; it is a paſſion and not a legitimate right.

It is true the fame of his power might increaſe the ſtrength of his government; but it might be equally increaſed by the reputation of his juſtice.

CHAP. III.

Of the Right of Conqueſt.

FROM the right of war comes that of conqueſt; which is the conſequence of that right, and ought therefore to follow its ſpirit.

The

The right the conqueror has over a conquered people is directed by four ſorts of laws, the law of nature, which makes every thing tend to the preſervation of the ſpecies; the law of natural reaſon, which teaches us to do to others what we would have done to ourſelves; the law that forms political ſocieties, whoſe duration nature has not limited; and, in fine, the law derived from the nature of the thing itſelf. Conqueſt is an acquiſition, and carries with it the ſpirit of preſervation and uſe, not of deſtruction.

The inhabitants of a conquered country are treated by the conqueror one of the four following ways. Either he continues to rule them according to their own laws, and aſſumes to himſelf only the exerciſe of the political and civil government; or he gives them new political and civil government; or he deſtroys and diſperſes the ſociety; or in fine, he exterminates the people.

The firſt way is conformable to the law of nations now followed; the fourth is more agreeable to the law of nations followed by the Romans: in reſpect to which I leave the reader to judge how far we have improved upon the ancients. We muſt give due commendations to our modern refinements in reaſon, religion, philoſophy, and manners.

The authors of our public law guided by ancient hiſtories, without confining themſelves to caſes of ſtrict neceſſity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by ſuppoſing the conquerors to be inveſted with I know not what right to kill: from thence they have drawn conſequences as terrible as

BOOK X. Chap. 3.

the very principle, and eſtabliſhed maxims which the conquerors themſelves, when poſſeſſed of the leaſt grain of ſenſe, never preſumed to follow. It is a plain caſe that when the conqueſt is completed, the conqueror has no longer a right to kill, becauſe he has no longer the plea of natural defence and ſelf-preſervation.

What has led them into this miſtake, is that they imagined a conqueror had a right to deſtroy the ſtate; from whence they inferred that he had a right to deſtroy the men that compoſe it; a wrong conſequence from a falſe principle. For from the deſtruction of the ſtate it does not at all follow, that the people who compoſe it ought to be alſo deſtroyed. The ſtate is the aſſociation of men, and not the men themſelves; the citizen may periſh, and the man remain.

From the right of killing in the caſe of conqueſt, politicians have drawn that of reducing to ſlavery; a conſequence as ill grounded as the principle.

There is no ſuch thing as a right of reducing people to ſlavery, but when it becomes neceſſary for the preſervation of the conqueſt. Preſervation, and not ſervitude, is the end of conqueſt; though ſervitude may happen ſometimes to be a neceſſary means of preſervation.

Even in that caſe it is contrary to the nature of things that the ſlavery ſhould be perpetual. The people enſlaved ought to be rendered capable of becoming ſubjects. Slavery in conqueſts is an accidental thing. When after the expiration of a certain ſpace of time all the parts of the conquering ſtate are connected with the conquered nation, by

by cuſtom, marriages, laws, aſſociations, and by a certain conformity of diſpoſition; there ought to be an end of the ſlavery. For the rights of the conqueror are founded intirely on the oppoſition between the two nations in thoſe very articles, whence prejudices ariſe, and the want of mutual confidence.

A conqueror therefore who reduces the conquered people to ſlavery, ought always to reſerve to himſelf the means (for means there are without number) of reſtoring them to their liberty.

Theſe are far from being vague and uncertain notions. Thus our anceſtors acted, thoſe anceſtors who conquered the Roman empire. The laws they made in the heat and tranſport of paſſion and in the inſolence of victory, were gradually ſoftened; thoſe laws were at firſt ſevere, but were afterwards rendered impartial. The Burgundians, Goths, and Lombards, would have the Romans continue a conquered people; but the laws of *Euric*, *Gundebald*, and *Rotharis*, made the Romans and Barbarians fellow citizens (a).

Charlemain, to tame the Saxons, deprived them of their liberty and property. Lewis the Debonnaire made them a free people (b), and this was one of the moſt prudent regulations during his whole reign. Time and ſervitude had ſoftened their manners, and they ever after adhered to him with the greateſt fidelity.

(a) See the Code of Barbarian laws.

(b) See the anonymous author of the life of Lewis the Debonnaire, in Duchesne's collection, tom. 2. pag. 296.

CHAP. IV.

Some advantages of a conquered People.

Book X. Chap. 4.

INSTEAD of inferring ſuch deſtructive conſequences from the right of conqueſt, much better would it have been for politicians to mention the advantages which this very right may ſometimes give to a conquered people; advantages which would be more ſenſibly, and more univerſally experienced, were our law of nations exactly followed, and eſtabliſhed in every part of the globe.

Conquered countries are, generally ſpeaking, degenerated from their original inſtitution. Corruption has crept in, the execution of the laws has been neglected, and the government is grown oppreſſive. Who can queſtion but ſuch a ſtate would be a gainer, and derive ſome advantages from the very conqueſt itſelf, if it did not prove deſtructive? When a government is arrived to that degree of corruption as to be incapable of reforming itſelf, it would not loſe much by being new moulded. A conqueror who enters triumphant into a country, where the moneyed men have by a variety of artifices inſenſibly arrived at innumerable ways of encroaching on the public; where the miſerable people, who ſee abuſes grown into laws, are ready to ſink under the weight of oppreſſion, yet think they have no right to apply for redreſs; a conqueror, I ſay, may make a total change, and then the tyranny of thoſe wretches will be the firſt thing expoſed to his reſentment.

We have beheld, for inſtance, countries oppreſſed by the farmers of the revenues, and eaſed afterwards

afterwards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuſes have been often redreſſed without any interpoſition of the conqueror. Book X. Chap. 4.

Sometimes the frugality of a conquering nation has enabled them to allow the conquered thoſe neceſſaries, of which they had been deprived under a lawful prince.

A conqueſt may deſtroy pernicious prejudices, and lay, if I may preſume to uſe the expreſſion, the nation under a better genius.

What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they filled their heads with a frantic ſuperſtition. They might have ſet ſlaves at liberty; they made free men ſlaves. They might have undeceived them with regard to the abuſe of human ſacrifices; inſtead of that they deſtroyed them. Never ſhould I have finiſhed, were I to recount all the good they might have done, and all the miſchief they committed.

It is a conqueror's buſineſs to repair a part of the miſchief he has occaſioned. The right therefore of conqueſt I define thus: a neceſſary, lawful, but unhappy power, which leaves the conqueror under a heavy obligation of repairing the injuries done to humanity.

CHAP. V.

Gelon, King of Syracuſe.

THE nobleſt treaty of peace ever mentioned in hiſtory is, in my opinion, that which Gelon made with the Carthaginians. He inſiſted upon

Book X. Chap. 6.

upon their abolishing the custom of sacrificing their children (c). Glorious indeed! After having defeated three hundred thousand Carthaginians, he required a condition that was advantageous only to themselves, or rather he stipulated in favour of human nature.

(c) See M. Barbeyrac's collection Art 112.

The Bactrians exposed their aged fathers to be devoured by large mastiffs: a custom suppressed by Alexander (d), whereby he obtained a signal triumph over superstition.

(d) Strabo lib. 2.

CHAP. VI.

Of Conquests made by a Republic.

IT is contrary to the nature of things, that in a confederate government one state should make any conquest over another, as in our days we have seen in Switzerland *. In mixt confederate republics, where the association is between petty republics and monarchies, of a small extent, this is not so absurd.

Contrary it is also to the nature of things, that a democratical republic should conquer towns, which cannot enter into the sphere of its democracy. It is necessary that the conquered people should be capable of enjoying the privileges of sovereignty, as was settled in the very beginning among the Romans. The conquest ought to be limited to the number of citizens fixt for the democracy.

If a democratical republic subdues a nation in order to govern them as subjects, it exposes its own liberty; because it intrusts too great a power to

* With regard to Tockenburg.

those who are appointed to the command of the conquered provinces. Book X. Chap. 6.

How dangerous would have been the situation of the republic of Carthage, had Hannibal made himself master of Rome? What would not he have done in his own country, had he been victorious, he who caused so many revolutions in it after his defeat *?

Hanno could never have dissuaded the senate from sending succours to Hannibal, had he used no other argument than his own jealousy. The Carthaginian senate, whose wisdom is so highly extolled by Aristotle (and which has been evidently proved by the prosperity of that republic) could never have been determined by other than solid reasons. They must have been stupid not to see, that an army at the distance of three hundred leagues would necessarily be exposed to losses, which required reparation.

Hanno's party insisted that Hannibal should be delivered up to the Romans †. They could not at that time be afraid of the Romans; they were therefore apprehensive of Hannibal.

It was impossible, some will say, for them to imagine that Hannibal had been so successful. But how was it possible for them to doubt of it? Could the Carthaginians, a people spread over all the earth, be ignorant of what was transacting in Italy? No: they were sufficiently acquainted with it, and for that reason they did not care to send supplies to Hannibal.

* He was at the head of a faction.

† Hanno wanted to deliver Hannibal up to the Romans, as Cato would fain have delivered up Cæsar to the Gauls.

Hanno

Book X. Chap. 7, and 8.

Hanno became more reſolute after the battle of Trebia, after the battle of Thraſimenus, after that of Cannæ; it was not his incredulity that increaſed, but his fear.

CHAP. VII.

The ſame Subject continued.

THERE is ſtill another inconveniency in conqueſts made by democracies: their government is ever odious to the conquered ſtates. It is apparently monarchical: but in reality it is much more oppreſſive than monarchy, as the experience of all ages and countries evinces.

The conquered people are in a melancholy ſituation; they neither enjoy the advantages of a republic, nor thoſe of a monarchy.

What has been here ſaid of a popular ſtate, is applicable to ariſtocracy.

CHAP. VIII.

The ſame Subject continued.

WHEN a republic therefore keeps another nation in ſubjection, it ſhould endeavour to repair the inconveniencies ariſing from the nature of its ſituation, by giving it good laws both for the political and civil government of the people.

We have an inſtance of an iſland in the Mediterranean, ſubject to an Italian republic; whoſe political and civil laws with regard to the inhabitants of that iſland were extremely defective.

The

The act of indemnity *, by which it ordained that no one ſhould be condemned to bodily puniſhment in conſequence of the private knowledge of the governor, *ex informata conſcientia*, is ſtill recent in every body's memory. There have been frequent inſtances of the people's petitioning for privileges: here the ſovereign grants only the common right of all nations. BOOK X. Chap. 9.

CHAP. IX.

Of Conqueſts made by a Monarchy.

IF a monarchy can long ſubſiſt before it is weakened by its increaſe, it will become formidable; and its ſtrength will remain entire, while pent up by the neighbouring monarchies.

It ought not therefore to aim at conqueſts beyond the natural limits of its government. So ſoon as it has paſſed theſe limits, it is prudence to ſtop.

In this kind of conqueſt things muſt be left as they were found; the ſame courts of judicature, the ſame laws, the ſame cuſtoms, the ſame privileges: there ought to be no other alteration than that of the army and of the name of the ſovereign.

When a monarchy has extended its limits by the conqueſt of neighbouring provinces, it ſhould treat thoſe provinces with great lenity.

* Of the 18th of October 1738. printed at Genoa. by Franchelli. Vietiamo al noſtro general governatore in detta iſola di condannare in avvenire ſolamente *ex informata conſcientia* perſona alcuna nazionale in pena afflittiva; potrá bensì arreſtare ed incarcerare le perſone che gli ſarranno ſoſpette, ſalvo di renderne poi a noi conto ſollecitamente. Art. 6.

If

Book X. Chap. 10.

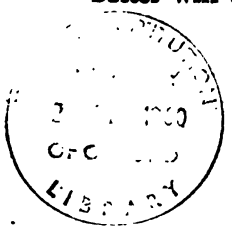
If a monarchy has been long endeavouring at conquests, the provinces of its ancient demesne are generally ill-used. They are obliged to submit both to the new and to the ancient abuses; and to be depopulated by a vast metropolis that swallows up the whole. Now if after having made conquests round this demesne, the conquered people were treated like the ancient subjects, the state would be undone; the taxes sent by the conquered provinces to the capital would never return; the inhabitants of the frontiers would be ruined, and consequently the frontiers would be weaker; the people would be disaffected; and the subsistence of the armies designed to act and remain there, would become more precarious.

Such is the necessary state of a conquering monarchy; a shocking luxury in the capital; misery in the provinces somewhat distant; and plenty in the most remote. It is the same with such a monarchy as with our planet; fire at the center, verdure on the surface, and between both a dry, cold, and barren earth.

CHAP. X.

Of one Monarchy that subdues another.

SOMETIMES one monarchy subdues another. The smaller the latter, the better it is over-awed by fortresses; and the larger it is, the better will it be preserved by colonies.



CHAP.

CHAP. XI.

Of the Manners of a conquered People.

IT is not ſufficient in thoſe conqueſts to let the conquered nation enjoy their own laws; it is perhaps more neceſſary to leave them alſo their manners, becauſe people in general have a ſtronger attachment to theſe, than to their laws. Book X. Chap. 10. and 11.

The French have been driven nine times out of Italy, becauſe, as hiſtorians ſay, (c) of their inſolent familiarities with the fair ſex. It is too much for a nation to be obliged to bear not only with the pride of conquerors, but with their incontinence and indiſcretion; theſe are, without doubt, moſt grievous and intolerable, as they are the ſource of infinite outrages.

(c) See Puffendorf's Univerſal Hiſtory.

CHAP. XII.

Of a Law of Cyrus.

FAR am I from thinking that a good law which Cyrus made to oblige the Lydians to practiſe none but mean or infamous profeſſions. It is true, he directed his attention to an object of the greateſt importance; he thought of guarding againſt revolts, and not invaſions: but invaſions will ſoon come, when the Perſians and Lydians unite and corrupt each other. I would therefore much rather ſupport by laws the ſimplicity and rudeneſs of the conquering nation, than the effeminacy of the conquered.

Ariſtodemus

Book IX. Chap. 13.

Ariſtodemus, tyrant of Cumæ (d), uſed all his endeavours to baniſh courage, and to enervate the minds of youth. He ordered that boys ſhould let their hair grow in the ſame manner as girls, that they ſhould deck it with flowers, and wear long robes of different colours down to their heels; that when they went to their maſters of muſic and dancing, they ſhould have women with them to carry their umbrello's, perfumes, and fans, and to preſent them with combs and looking-glaſſes whenever they bathed. This education laſted till the age of twenty, an education that could be agreeable to none but to a petty tyrant, who expoſes his ſovereignty to defend his life.

(d) Dionyſ. Halicar. l. 7.

CHAP. XIII.

CHARLES XII.

THIS prince, who depended entirely on his own ſtrength, haſtened his ruin by forming deſigns that could never be executed but by a long war, a thing which his kingdom was unable to ſupport.

It was not a declining ſtate he undertook to ſubvert, but a riſing empire. The Ruſſians made uſe of the war he waged againſt them, as of a military ſchool. Every defeat brought them nearer to victory; and loſing abroad, they learnt to defend themſelves at home.

Charles, in the deſerts of Poland, imagined himſelf ſovereign of the whole world: here he wandered, and with him in ſome meaſure wandered Sweden; whilſt

whilſt his capital enemy acquired new ſtrength againſt him, locked him up, made ſettlements along the Baltic, deſtroyed or ſubdued Livonia.

Sweden was like a river, whoſe waters are cut off at the fountain head, in order to change its courſe.

It was not the affair of *Pultova* that ruined Charles. Had he not been deſtroyed at that place, he would in another. The caſualties of fortune are eaſily repaired; but who can be guarded againſt events that inceſſantly ariſe from the nature of things?

But neither nature nor fortune were ever ſo much againſt him, as he himſelf.

He was not directed by the preſent ſituation of things, but by a kind of plan of his forming; and even this he followed very ill. He was not an Alexander; but he would have made an excellent ſoldier under that monarch.

Alexander's project ſucceeded becauſe it was prudently concerted. The bad ſucceſs of the Perſians in their ſeveral invaſions of Greece, the conqueſts of Ageſilaus, and the retreat of the ten thouſand, had ſhewn to demonſtration the ſuperiority of the Greeks in their manner of fighting and in their arms; and it was well known that the Perſians were too proud to be corrected.

It was no longer poſſible for them to weaken Greece by diviſions: Greece was then united under one head, who could not pitch upon a better method of rendering her inſenſible of her ſervitude, than by flattering her vanity with the deſtruction of her hereditary enemy, and with the hopes of the conqueſt of Aſia.

Book X. Chap. 13.

An empire cultivated by the moſt induſtrious nation in the world, that followed agriculture from a principle of religion; an empire abounding with every conveniency of life, furniſhed the enemy with all neceſſary means of ſubſiſting.

It was eaſy to judge by the pride of thoſe kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by their forwardneſs in venturing battles; and that the flattery of their courtiers would never permit them to doubt of their grandeur.

The project was not only wiſe, but wiſely executed. Alexander in the rapidity of his conqueſts, even in the impetuoſity of his paſſion, had, if I may ſo expreſs myſelf, a flaſh of reaſon by which he was directed, and which thoſe who would fain have made a romance of his hiſtory, and whoſe minds were more corrupt than his, could not conceal from our view. Let us deſcend more minutely into his hiſtory.

CHAP. XIV.

ALEXANDER.

HE did not ſet out upon his expedition till he had ſecured Macedonia againſt the neighbouring barbarians, and completed the reduction of Greece; he availed himſelf of this conqueſt for no other end than for the execution of his grand enterprize; he rendered the jealouſy of the Lacedemonians of no effect; he attacked the maritime provinces; he cauſed his land forces to keep cloſe to the ſea coaſt, that they

might not be separated from his fleet; he made an admirable use of discipline against numbers; he never wanted provisions; and if it be true that victory gave him every thing, he, in his turn, did every thing to obtain it. Book X. Chap. 14.

In the beginning of his enterprize, a time when the least check might have proved his destruction, he trusted very little to fortune; but when his reputation was established by a series of prosperous events, he sometimes had recourse to temerity. When before his departure for Asia, he marched against the Triballians and Illyrians, you find he waged war (a) against those people in the very same manner as Cæsar afterwards conducted that against the Gauls. Upon his return to Greece (b), it was in some measure against his will, that he took and destroyed Thebes. When he invested that city, he wanted the inhabitants to come into terms of peace; but they hastened their own ruin. When it was debated, whether he should attack the Persian fleet (c), it is Parmenio that shews his presumption, Alexander his wisdom. His aim was to draw the Persians from the sea-coast, and to lay them under a necessity of abandoning their marine, in which they had a manifest superiority. Tyre being from principle attached to the Persians, who could not subsist without the commerce and navigation of that city; Alexander destroyed it. He subdued Egypt, which Darius had left bare of troops, while he was assembling immense armies in another world.

(a) See Arrian de expedit. Alexandri, lib. 1.

(b) Ibid.

(c) Ibid.

To the passage of the Granicus Alexander owed the conquest of the Greek colonies; to the battle

Book X. Chap. 14.

of Iſſus the reduction of Tyre and Egypt; to the battle of Arbela, the empire of the world.

After the battle of Iſſus, he ſuffered Darius to eſcape, and employed his time in ſecuring and regulating his conqueſts: after the battle of Arbela he purſued him ſo cloſe (d), as to leave him no place of ſhelter in his empire. Darius enters his towns, his provinces, to quit them the next moment; and Alexander marches with ſuch rapidity, that the empire of the world ſeems to be rather the prize of an Olympian race, than the fruit of a great victory.

(d) See Arrian de expedit. Alexandri.

In this manner he carried on his conqueſts; let us now ſee how he preſerved them.

He oppoſed thoſe who would have had him treat the Greeks as maſters (e), and the Perſians as ſlaves. He thought only of uniting the two nations, and of aboliſhing the diſtinctions of a conquering and a conquered people. After he had compleated his victories, he relinquiſhed all thoſe prejudices that had helped him to obtain them. He aſſumed the manners of the Perſians, that he might not chagrine them too much by obliging them to conform to thoſe of the Greeks. It was this humanity which made him ſhew ſo great a reſpect for the wife and mother of Darius; and this that made him ſo continent. What a conqueror! he is lamented by all the nations he has ſubdued! What an uſurper! At his death the very family he has caſt from the throne, is all in tears. Theſe were the moſt glorious paſſages in his life, and ſuch as hiſtory cannot produce an inſtance in any other conqueror.

(e) This was Ariſtotle's advice. Plutarch's *Morals*, of the fortune and virtue of Alexander.

Nothing

Nothing conſolidates a conqueſt more than the union formed between the two nations by marriages. Alexander choſe his wives from the nation he had ſubdued; he inſiſted on his courtiers doing the ſame; and the reſt of the Macedonians followed the example. The Franks and Burgundians permitted thoſe marriages (f); the Viſigoths forbad them in Spain, and afterwards allowed them (g). By the Lombards they were not only allowed but encouraged (h). When the Romans wanted to weaken Macedonia, they ordered that there ſhould be no intermarriages between the people of different provinces.

Alexander, whoſe aim was to unite the two nations, thought fit to eſtabliſh in Perſia a great number of Greek colonies. He built therefore a multitude of towns; and ſo ſtrongly were all the parts of this new empire cemented, that after his deceaſe, amidſt the diſturbances and confuſion of the moſt frightful civil wars, when the Greeks had reduced themſelves, as it were, to a ſtate of annihilation, not a ſingle province of Perſia revolted.

To prevent Greece and Macedon from being too much exhauſted, he ſent a colony of Jews * to Alexandria; the manners of thoſe people ſignified nothing to him, provided he could be ſure of their fidelity.

He not only ſuffered the conquered nations to retain their own cuſtoms and manners; but likewiſe their civil laws; and frequently the very kings

BOOK IX. Chap. 14.

(f) See the Law of the Burgundians, tit. 12. art. 5.

(g) See the Law of the Viſigoths book 3. tit. 1. §. 1. which abrogates the ancient law that had more regard, it ſays, to the difference of nations than to that of people's conditions.

(h) See the law of the Lombards, * book 2. tit. 7. §. 1. & 2.

* The kings of Syria, abandoning the plan laid down by the founder of the empire, reſolved to oblige the Jews to conform to the manners of the Greeks; a reſolution that gave the moſt terrible ſhock to their government.

Book X. Chap. 14.

and governours to whom they had been ſubject: the Macedonians (i) he placed at the head of the troops, and the natives of the country at the head of the government, rather chuſing to run the hazard of a particular diſloyalty, (which ſometimes happened) than of a general revolt.

(i) See Arrian de expedit. Alexand. lib. 3. and others,

He paid a great reſpect to the ancient traditions, and to all the public monuments of the glory or vanity of nations. The Perſian monarchs having deſtroyed the temples of the Greeks, Babylonians, and Egyptians, Alexander rebuilt them (k): few nations ſubmitted to his yoke, to whoſe religion he did not conform; and his conqueſts ſeem to have been intended only to make him the particular monarch of each nation, and the firſt inhabitant of each city. The aim of the Romans in conqueſt was to deſtroy, his to preſerve; and wherever he directed his victorious arms, his chief view was to atchieve ſomething, from whence that country might derive an increaſe of proſperity and power. To attain this end, he was enabled firſt of all by the greatneſs of his genius; ſecondly, by his frugality and private œconomy (l); thirdly, by his profuſion in matters of importance. He was cloſe and reſerved in his private expences; but generous to the higheſt degree in thoſe of a public nature. In regulating his houſhold, he was the private Macedonian; but in paying the troops, in ſharing his conqueſts with the Greeks, and in his largeſſes to every ſoldier in his army, he was Alexander.

(k) Ibid.

(l) Ibid.

He committed two very bad actions, in ſetting Perſepolis on fire, and ſlaying Clitus; but he rendered them famous by his repentance. Hence it is that his crimes are forgot, while his regard for virtue

virtue was recorded: they were conſidered rather as unlucky accidents, than as his own deliberate acts. Poſterity, ſtruck with the beauty of his mind, even in the midſt of his irregular paſſion, can view him only with pity, but never with an eye of hatred.

Let us draw a compariſon between him and Cæſar. The Roman general, by attempting to imitate the Aſiatic monarch, flung his fellow-citizens into a ſtate of deſpair for a matter of mere oſtentation; the Macedonian prince, by the ſame imitation, did a thing which was quite agreeable to his original ſcheme of conqueſt.

CHAP. XV.

New Methods of preſerving a Conqueſt.

WHEN a monarch has ſubdued a large country, he may make uſe of an admirable method, equally proper for moderating deſpotic power, and for preſerving the conqueſt; it is a method practiſed by the conquerors of China.

In order to prevent the vanquiſhed nation from falling into deſpair, the victors from growing inſolent and proud, the government from becoming military, and to contain the two nations within their duty; the Tartar family now on the throne of China, has ordained that every military corps in the provinces ſhould be compoſed half of Chineſe and half Tartars, to the end that the jealouſy between the two nations may keep them within bounds. The courts of judicature are likewiſe half Chineſe, and half Tartars. This is productive of ſeveral good effects. 1. The two nations

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are a check to one another. 2. They both preſerve the civil and military power, and one is not deſtroyed by the other. 3. The conquering nation may ſpread itſelf without being weakened and loſt. It is likewiſe enabled to withſtand civil and foreign wars. The want of ſo wiſe an inſtitution as this, has been the ruin of almoſt all the conquerors that ever exiſted.

CHAP. XVI.

Of Conqueſts made by a deſpotic Prince.

WHEN a conqueſt happens to be vaſtly large, it ſuppoſes a deſpotic power: and then the army diſperſed in the provinces is not ſufficient. There ſhould be always a body of faithful troops near the prince, ready to fall inſtantly upon any part of the empire that may chance to waver. This military corps ought to awe the reſt, and to ſtrike terror into thoſe who through neceſſity have been intruſted with any authority in the empire. The emperor of China has always a large body of Tartars near his perſon, ready upon all occaſions. In India, in Turky, in Japan, the prince has always a body-guard, independent of the other regular forces. This particular corps keeps the diſperſed troops in awe.

CHAP. XVII.

The ſame Subject continued.

WE have obſerved that the countries ſubdued by a deſpotic monarch, ought to be held by a vaſſal. Hiſtorians are very laviſh of their praiſes

praiſes on the generoſity of thoſe conquerors, who reſtored the princes to the throne whom they had vanquiſhed. Extremely generous then were the Romans, who made ſuch a number of kings, in order to have inſtruments of ſlavery *. A proceeding of that kind is abſolutely neceſſary. If the conqueror intends to preſerve the country which he has ſubdued, neither the governors he ſends will be able to contain the ſubjects within duty, nor he himſelf the governors. He will be obliged to ſtrip his ancient patrimony of troops, in order to ſecure his new dominions. The miſeries of each nation will be common to both; civil broils will ſpread themſelves from one to the other. On the contrary, if the conqueror reſtores the legitimate prince to the throne, he will of courſe have an ally; by the junction of whoſe forces, his own power will be augmented. We have a recent inſtance of this in *Shah Nadir*, who conquered the Mogul, ſeized his treaſures, and left him in poſſeſſion of Indoſtan.

* Ut haberent inſtrumenta ſervitutis & reges.

BOOK XI.

Of the Laws which eſtabliſh political Liberty, with regard to the Conſtitution.

CHAP. I.

A general IDEA.

BOOK XI. Ch. 1. & 2.

I MAKE a diſtinction beween the laws that eſtabliſh political liberty, as it relates to the conſtitution, and thoſe by which it is eſtabliſhed, as it relates to the citizen. The former ſhall be the ſubject of this book; the latter I ſhall examine in the next.

CHAP. II.

Different Significations of the word Liberty.

THERE is no word that admits of more various ſignifications, and has made more different impreſſions on the human mind, than that of *Liberty*. Some have taken it for a facility of depoſing a perſon on whom they had conferred a tyrannical authority; others for the power of chuſing a ſuperior whom they are obliged to obey; others for the right of bearing arms, and of being thereby enabled to uſe violence; others, in fine, for the privilege of being governed by a native of their own country, or by their own laws *. A certain nation

* I have copied, *ſays Cicero*, Scœvola's edict, which permits the Greeks to terminate their differences among themſelves according

nation, for a long time thought liberty conſiſted in the privilege of wearing a long beard *. Some have annexed this name to one form of government excluſive of others: Thoſe who had a republican taſte, applied it to this ſpecies of polity; thoſe who liked a monarchical ſtate, gave it to monarchy †. Thus they have all applied the name of *liberty* to the government moſt ſuitable to their own cuſtoms and inclinations: and as in republics, the people have not ſo conſtant and ſo preſent a view of the cauſes of their miſery, and as the magiſtrates ſeem to act only in conformity to the laws, hence liberty is generally ſaid to reſide in republics, and to be baniſhed from monarchies. In fine, as in democracies the people ſeem to act almoſt as they pleaſe; this ſort of government has been deemed the moſt free; and the power of the people has been confounded with their liberty.

CHAP. III.

In what Liberty conſiſts.

IT is true, that in democracies the people ſeem to act as they pleaſe; but political liberty does not conſiſt in an unlimited freedom. In governments, that is, in ſocieties directed by laws, liberty can conſiſt only in the power of doing what

cording to their own laws; this makes them conſider themſelves as a free people.

* The Ruſſians could not bear that Czar Peter ſhould make them cut it off.

† The Cappadocians refuſed the condition of a republican ſtate, which was offered them by the Romans.

we ought to will, and in not being conſtrained to do, what we ought not to will.

We muſt have continually preſent to our minds the difference between independence and liberty. Liberty is a right of doing whatever the laws permit; and if a citizen could do what they forbid, he would be no longer poſſeſt of liberty, becauſe all his fellow citizens would have the ſame power.

CHAP. IV.

The ſame Subject continued.

DEMOCRATIC and ariſtocratic ſtates are not in their own nature free. Political liberty is to be found only in moderate governments: and even in theſe, it is not always found. It is there only when there is no abuſe of power; but conſtant experience ſhews us, that every man inveſted with power is apt to abuſe it; and to carry his authority as far as it will go. Is it not ſtrange, though true, to ſay, that virtue itſelf has need of limits?

To prevent this abuſe, it is neceſſary from the very nature of things, power ſhould be a check to power. A government may be ſo conſtituted, as no man ſhall be compelled to do things to which the law does not oblige him, nor forced to abſtain from things which the law permits.

CHAP. V.

Of the End or View of different Governments.

THOUGH all governments have the ſame general end, which is that of preſervation, yet each

each has another particular object. Increaſe of dominion was the object of Rome; war, that of Sparta; religion, that of the Jewiſh laws; commerce, that of Marſeilles; public tranquillity, that of the laws of China*; navigation, that of the laws of Rhodes; natural liberty, that of the policy of the Savages; in general, the pleaſures of the prince, that of deſpotic ſtates; that of monarchies, the prince's and the kingdom's glory: the independence of individuals is the end aimed at by the laws of Poland, from thence reſults the oppreſſion of the whole†.

One nation there is alſo in the world, that has for the direct end of its conſtitution political liberty. We ſhall preſently examine the principles on which this liberty is founded; if they are ſound, liberty will appear in its higheſt perfection.

To diſcover political liberty in a conſtitution, no great labour is requiſite. If we are capable of ſeeing it where it exiſts, it is ſoon found, and we need not go far in ſearch of it.

CHAP. VI.

Of the Conſtitution of England.

IN every government there are three ſorts of power: the legiſlative; the executive in reſpect to things dependent on the law of nations; and the executive, in regard to matters that depend on the civil law.

* The natural end of a ſtate that has no foreign enemies, or that thinks itſelf ſecured againſt them by barriers.

† Inconveniency of the *Liberum veto*.

By

By virtue of the first, the prince, or magistrate, enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.

Moſt kingdoms in Europe enjoy a moderate government, becauſe the prince who is inveſted with the two firſt powers, leaves the third to his ſubjects. In Turkey, where theſe three powers are united in the Sultan's perſon, the ſubjects groan under the moſt dreadful oppreſſion.

In the republics of Italy where theſe three powers are united, there is leſs liberty than in our monarchies. Hence their government is obliged to have recourſe to as violent methods for its ſupport, as even that of the Turks; witneſs the ſtate inquiſitors *, and the lion's mouth into which every informer may at all hours throw his written accuſations.

In what a ſituation muſt the poor ſubject be, under thoſe republics! The ſame body of magiſtrates are poſſeſſed, as executors of the laws, of the whole power they have given themſelves in quality of legiſlators. They may plunder the ſtate by their general determinations; aad as they have likewiſe the judiciary power in their hands, every private citizen may be ruined by their particular deciſions.

The whole power is here united in one body; and though there is no external pomp that indicates a deſpotic ſway, yet the people feel the effects of it every moment.

Hence it is that many of the princes of Europe, whoſe aim has been levelled at arbitrary power, have conſtantly ſet out with uniting in their own perſons all the branches of magiſtracy, and all the great offices of ſtate.

* At Venice.

I allow indeed that the mere hereditary ariſtocracy of the Italian republics, does not exactly anſwer to the deſpotic power of the Eaſtern princes. The number of magiſtrates ſometimes moderate the power of the magiſtracy; the whole body of the nobles do not always concur in the ſame deſign; and different tribunals are erected, that temper each other. Thus at Venice the legiſlative power is in the *council*, the executive in the *pregadi*, and the judiciary in the *quarantia*. But the miſchief is that theſe different tribunals are compoſed of magiſtrates all belonging to the ſame body; which conſtitutes almoſt one and the ſame power.

The judiciary power ought not to be given to a ſtanding ſenate, it ſhould be exerciſed by perſons taken from the body of the people *, at certain times of the year, and conſiſtently with a form and manner preſcribed by law, in order to erect a tribunal that ſhould laſt only ſo long as neceſſity requires.

By this method the judicial power ſo terrible to mankind, not being annexed to any particular ſtate or profeſſion, becomes, as it were, inviſible. People have not then the judges continually preſent to their view; they fear the office, but not the magiſtrate.

In accuſations of a deep or criminal nature, it is proper the perſon accuſed ſhould have the privilege of chuſing in ſome meaſure his judges in concurrence with the law; or at leaſt he ſhould have a right to except againſt ſo great a number, that the remaining part may be deemed his own choice.

* As at Athens.

The

The other two powers may be given rather to magiſtrates or permanent bodies, becauſe they are not exerciſed on any private ſubject; one being no more than the general will of the ſtate, and the other the execution of that general will.

But though the tribunals ought not to be fixt, the judgments ought; and to ſuch a degree as to be ever conformable to the letter of the law. Were they to be the private opinion of the judge, people would then live in ſociety, without exactly knowing the nature of their obligations.

The judges ought likewiſe to be of the ſame rank as the accuſed, or in other words, his peers; to the end that he may not imagine he is fallen into the hands of perſons inclined to treat him with rigour.

If the legiſlature leaves the executive power in poſſeſſion of a right to impriſon thoſe ſubjects, who can give ſecurity for their good behaviour, there is an end of liberty; unleſs they are taken up, in order to anſwer without delay to a capital crime; in which caſe they are really free, being ſubject only to the power of the law.

But ſhould the legiſlature think itſelf in danger by ſome ſecret conſpiracy againſt the ſtate, or by a correſpondence with a foreign enemy, it might authorize the executive power, for a ſhort and limited time, to impriſon ſuſpected perſons, who in that caſe would loſe their liberty only for a while, to preſerve it for ever.

And this is the only reaſonable method that can be ſubſtituted to the tyrannical magiſtracy of the *Ephori*, and to the *ſtate inquiſitors* of Venice, who are alſo deſpotical.

As in a country of liberty, every man who is ſuppoſed a free agent, ought to be his own governor; the legiſlative power ſhould reſide in the whole body of the people. But ſince this is impoſſible in large ſtates, and in ſmall ones is ſubject to many inconveniencies; it is fit the people ſhould tranſact by their repreſentatives, what they cannot tranſact by themſelves.

The inhabitants of a particular town are much better acquainted with its wants and intereſts, than with thoſe of other places; and are better judges of the capacity of their neighbours, than of that of the reſt of their countrymen. The members therefore of the legiſlature ſhould not be choſen from the general body of the nation; but it is proper that in every conſiderable place, a repreſentative ſhould be elected by the inhabitants.

The great advantage of repreſentatives is their capacity of diſcuſſing public affairs. For this the the people collectively are extremely unfit, which is one of the chief inconveniencies of a democracy.

It is not at all neceſſary that the repreſentatives who have received a general inſtruction from their conſtituents, ſhould wait to be directed on each particular affair, as is practiſed in the diets of Germany. True it is, that by this way of proceeding, the ſpeeches of the deputies might with greater propriety be called the voice of the nation; but, on the other hand, this would occaſion infinite delays; would give each deputy a power of controlling the aſſembly; and, on the moſt urgent and preſſing occaſions, the wheels of government might be ſtopped by the caprice of a ſingle perſon.

Whea

When the deputies, as Mr. Sidney well obſerves, repreſent a body of people, as in Holland, they ought to be accountable to their conſtituents; but it is a different thing in England, where they are deputed by boroughs.

All the inhabitants of the ſeveral diſtricts ought to have a right of voting at the election of a repreſentative, except ſuch as are in ſo mean a ſituation, as to be deemed to have no will of their own.

One great fault there was in moſt of the ancient republics, that the people had a right to active reſolutions, ſuch as require ſome execution, a thing of which they are abſolutely incapable. They ought to have no ſhare in the government but for the chuſing of repreſentatives, which is within their reach. For though few can tell the exact degree of men's capacities, yet there are none but are capable of knowing in general, whether the perſon they chuſe is better qualified than moſt of his neighbours.

Neither ought the repreſentative body to be choſen for the executive part of government, for which it is not ſo fit; but for the enacting of laws, or to ſee whether the laws in being are duly executed, a thing ſuited to their abilities, and which none indeed but themſelves can properly perform.

In ſuch a ſtate there are always perſons diſtinguiſhed by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a ſingle vote like the reſt, the common liberty would be their ſlavery, and they would have no intereſt in ſupporting it, as moſt of the popular reſolutions would be againſt them.

them. The ſhare they have therefore in the legiſlature ought to be proportioned to their other advantages in the ſtate; which happens only when they form a body that has a right to check the licentiouſneſs of the people, as the people have a right to oppoſe any encroachment of theirs.

The legiſlative power is therefore committed to the body of the nobles, and to that which repreſents the people, each having their aſſemblies and deliberations apart, each their ſeparate views and intereſts.

Of the three powers above-mentioned, the judiciary is in ſome meaſure next to nothing: there remain therefore only two; and as theſe have need of a regulating power to moderate them, the part of the legiſlative body compoſed of the nobility, is extremely proper for this purpoſe.

The body of the nobility ought to be hereditary. In the firſt place it is ſo in its own nature; and in the next there muſt be a conſiderable intereſt to preſerve its privileges; privileges that in themſelves are obnoxious to popular envy, and of courſe in a free ſtate are always in danger.

But as an hereditary power might be tempted to purſue its own particular intereſts, and forget thoſe of the people; it is proper that where a ſingular advantage may be gained by corrupting the nobility, as in the laws relating to the ſupplies, they ſhould have no other ſhare in the legiſlation, than the power of rejecting, and not that of reſolving.

By the *power of reſolving*, I mean the right of ordaining by their own authority, or of amending what has been ordained by others. By the

power

power of rejecting, I would be underſtood to mean the right of annulling a reſolution taken by another; which was the power of the tribunes at Rome. And though the perſon poſſeſſed of the privilege of rejecting, may likewiſe have the right of approving; yet this approbation paſſes for no more than a declaration, that he intends to make no uſe of his privilege of rejecting, and is derived from that very privilege.

The executive power ought to be in the hands of a monarch, becauſe this branch of government, having need of diſpatch, is better adminiſtered by one than by many: on the other hand, whatever depends on the legiſlative power, is oftentimes better regulated by many than by a ſingle perſon.

But if there were no monarch, and the executive power ſhould be committed to a certain number of perſons ſelected from the legiſlative body, there would be an end then of liberty; by reaſon the two powers would be united, as the ſame perſons would ſometimes poſſeſs, and would be always able to poſſeſs, a ſhare in both.

Were the legiſlative body to be a conſiderable time without meeting, this would likewiſe put an end to liberty. For of two things one would naturally follow; either that there would be no longer any legiſlative reſolutions, and then the ſtate would fall into anarchy; or that theſe reſolutions would be taken by the executive power, which would render it abſolute.

It would be needleſs for the legiſlative body to continue always aſſembled. This would be troubleſome to the repreſentatives, and moreover would

cut out too much work for the executive power, ſo as to take off its attention to its office, and oblige it to think only of defending its own prerogatives, and the right it has to execute.

Again, were the legiſlative body to be always aſſembled, it might happen to be kept up only by filling the places of the deceaſed members with new repreſentatives; and in that caſe if the legiſlative body were once corrupted, the evil would be paſt all remedy. When different legiſlative bodies ſucceed one another, the people who have a bad opinion of that which is actually ſitting, may reaſonably entertain ſome hopes of the next: but were it to be always the ſame body, the people upon ſeeing it once corrupted, would no longer expect any good from its laws; and of courſe they would either become deſperate or fall into a ſtate of indolence.

The legiſlative body ſhould not meet of itſelf. For a body is ſuppoſed to have no will but when it is met; and beſides, were it not to meet unanimouſly, it would be impoſſible to determine which was really the legiſlative body; the part aſſembled, or the other. And if it had a right to prorogue itſelf, it might happen never to be prorogued; which would be extremely dangerous, in caſe it ſhould ever attempt to incroach on the executive power. Beſides there are ſeaſons, ſome more proper than others, for aſſembling the legiſlative body: it is fit therefore that the executive power ſhould regulate the time of meeting, as well as the duration of thoſe aſſemblies, according to the circumſtances and exigencies of ſtate known to itſelf.

Were

Were the executive power not to have a right of reſtraining the incroachments of the legiſlative body, the latter would become deſpotic; for as it might arrogate to itſelf what authority it pleaſed, it would ſoon deſtroy all the other powers.

But it is not proper, on the other hand, that the legiſlative power ſhould have a right to ſtay the executive. For as the execution has its natural limits, it is uſeleſs to confine it; beſides, the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a ſtop not only to the legiſlation, but likewiſe to the executive part of government; which was attended with infinite miſchiefs.

But if the legiſlative power in a free ſtate, has no right to ſtay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Coſmi and the Ephori gave no account of their adminiſtration.

But whatever may be the iſſue of that examination, the legiſlative body ought not to have a power of arraigning the perſon, nor of courſe the conduct of him who is intruſted with the executive power. His perſon ſhould be ſacred, becauſe as it is neceſſary for the good of the ſtate to prevent the legiſlative body from rendering themſelves arbitrary, the moment he is accuſed or tried, there is an end of liberty.

In this caſe, the ſtate would be no longer a monarchy, but a kind of a republic, though not a free government. But as the perſon intruſted with the executive power cannot abuſe it without

Book IX. Chap. 6.

bad counſellors, and ſuch as hate the laws as miniſters, though the laws protect them as ſubjects; theſe men may be examined and puniſhed. An advantage which this government has over that of *Gnidus*, where the law allowed of no ſuch thing as calling the *Amymones* * to an account, even after their adminiſtration †; and therefore the people could never obtain any ſatisfaction for the injuries done them.

Though in general the judiciary power ought not to be united with any part of the legiſlative, yet this is liable to three exceptions, founded on the particular intereſt of the party accuſed.

The great are always obnoxious to popular envy; and were they to be judged by the people, they might be in danger from their judges, and would moreover be deprived of the privilege which the meaneſt ſubject is poſſeſſed of in a free ſtate, of being tried by his peers. The nobility, for this reaſon, ought not to be cited before the ordinary courts of judicature, but before that part of the legiſlature which is compoſed of their own body.

It is poſſible that the law, which is clear-ſighted in one ſenſe, and blind in another, might, in ſome caſes, be too ſevere. But as we have already obſerved, the national judges are no more than the mouth that pronounces the words of the law, mere paſſive beings, incapable of moderating either its force or rigor. That part therefore of the legiſlative

* Theſe were magiſtrates choſen annually by the people. See Stephen of Byzantium.

† It was lawful to accuſe the Roman magiſtrates after the expiration of their ſeveral offices. See in Dionyſ. Halicarn. l. 9. the affair of *Genutius* the tribune

body,

body, which we have juſt now obſerved to be a neceſſary tribunal on another occaſion, is alſo a neceſſary tribunal in this; it belongs to its ſupreme authority to moderate the law in favour of the law itſelf, by mitigating the ſentence.

It might alſo happen that a ſubject intruſted with the adminiſtration of public affairs, may infringe the rights of the people, and be guilty of crimes which the ordinary magiſtrates either could not, or would not puniſh. But, in general, the legiſlative power cannot try cauſes; and much leſs can it try this particular caſe, where it repreſents the party aggrieved, which is the people. It can only therefore impeach. But before what court ſhall it bring its impeachment; muſt it go and demean itſelf before the ordinary tribunals which are its inferiors, and being compoſed moreover of men who are choſen from the people as well as itſelf, will naturally be ſwayed by the authority of ſo powerful an accuſer? No: in order to preſerve the dignity of the people, and the ſecurity of the ſubject, the legiſlative part which repreſents the people, muſt bring in its charge before the legiſlative part which repreſents the nobility, who have neither the ſame intereſts, nor the ſame paſſions.

Here is an advantage which this government has over moſt of the ancient republics, where this abuſe prevailed, that the people were at the ſame time both judge and accuſer.

The executive power, purſuant to what has been already ſaid, ought to have a ſhare in the legiſlature by the power of rejecting, otherwiſe it would ſoon be ſtripped of its prerogative. But ſhould the legiſlative

legiſlative power uſurp a ſhare of the executive, the latter would be equally undone.

If the prince were to have a part in the legiſlature by the power of reſolving, liberty would be loſt. But as it is neceſſary he ſhould have a ſhare in the legiſlature for the ſupport of his own prerogative, this ſhare muſt conſiſt in the power of rejecting.

The change of government at Rome was owing to this, that neither the ſenate who had one part of the executive power, nor the magiſtrates who were entruſted with the other, had the right of rejecting, which was entirely lodged in the people.

Here then is the fundamental conſtitution of the government we are treating of. The legiſlative body being compoſed of two parts, they check one another by the mutual privilege of rejecting. They are both reſtrained by the executive power, as the executive is by the legiſlative.

Theſe three powers ſhould naturally form a ſtate of repoſe or inaction. But as there is a neceſſity for movement in the courſe of human affairs, they are forced to move, but ſtill in concert.

As the executive power has no other part in the legiſlative, than the privilege of rejecting, it can have no ſhare in the public debates. It is not even neceſſary that it ſhould propoſe, becauſe as it may always diſapprove of the reſolutions that ſhall be taken, it may likewiſe reject the deciſions on thoſe propoſals which were made againſt its will.

In ſome ancient commonwealths, where public debates were carried on by the people in a body, it was natural for the executive power to propoſe and

debate in conjunction with the people, otherwiſe their reſolutions muſt have been attended with a ſtrange confuſion.

Were the executive power to determine the raiſing of public money, otherwiſe than by giving its conſent, liberty would be at an end; becauſe it would become legiſlative in the moſt important point of legiſlation.

If the legiſlative power was to ſettle the ſubſidies, not from year to year, but for ever, it would run the riſk of loſing its liberty, becauſe the executive power would be no longer dependent; and when once it was poſſeſſed of ſuch a perpetual right, it would be a matter of indifference, whether it held it of itſelf, or of another. The ſame may be ſaid, if it ſhould come to a reſolution of intruſting, not an annual, but a perpetual command, of the fleets and armies to the executive power.

To prevent the executive power from being able to oppreſs, it is requiſite that the armies with which it is entruſted, ſhould conſiſt of the people, and have the ſame ſpirit as the people, as was the caſe at Rome till the time of *Marius*. To obtain this end, there are only two ways, either that the perſons employed in the army, ſhould have ſufficient property to anſwer for their conduct to their fellow ſubjects, and be enliſted only for a year, as was cuſtomary at Rome: or if there ſhould be a ſtanding army compoſed chiefly of the moſt deſpicable part of the nation, the legiſlative power ſhould have a right to diſband them as ſoon as it pleaſed; the ſoldiers ſhould live in common with the reſt of the people; and no ſeparate camp, barracks, or fortreſs ſhould be ſuffered.

When

When once an army is eſtabliſhed, it ought not to depend immediately on the legiſlative, but on the executive power; and this from the very nature of the thing, its buſineſs conſiſting more in action than deliberation.

It is natural for mankind to ſet a higher value upon courage than timidity, on activity than prudence, on ſtrength than counſel. Hence the army will ever deſpiſe a ſenate, and reſpect their own officers. They will naturally ſlight the orders ſent them by a body of men, whom they look upon as cowards, and therefore unworthy to command them. So that as ſoon as the troops depend intirely on the legiſlative body, it becomes a military government; and if the contrary has ever happened, it has been owing to ſome extraordinary circumſtances. It is becauſe the army was always kept divided; it is becauſe it was compoſed of ſeveral bodies that depended each on a particular province; it is becauſe the capital towns were ſtrong places, defended by their natural ſituation, and not garriſoned with regular troops. Holland, for inſtance, is ſtill ſafer than Venice; ſhe might drown, or ſtarve the revolted troops; for as they are not quartered in towns capable of furniſhing them with neceſſary ſubſiſtence; this ſubſiſtence is of courſe precarious.

In peruſing the admirable treatiſe of Tacitus on the manners of the Germans *, we find it is from that nation the Engliſh have borrowed the

* *De minoribus rebus principes conſultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium eſt, apud principes pertractentur.*

idea of their political government. This beautiful system was invented first in the woods. BOOK XI. Chap. 6.

As all human things have an end, the state we are speaking of will lose its liberty, will perish. Have not Rome, Sparta, and Carthage perished? It will perish when the legislative power shall be more corrupt than the executive.

It is not my business to examine whether the English actually enjoy this liberty, or not. Sufficient it is for my purpose to observe, that it is established by their laws; and I inquire no farther.

Neither do I pretend by this to undervalue other governments, nor to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design, I who think that even the highest refinement of reason is not always desirable, and that mankind generally find their account better in mediums than in extremes?

Harrington, in his *Oceana*, has also enquired into the utmost degree of liberty, to which the constitution of a state may be carried. But of him indeed it may be said, that for want of knowing the nature of real liberty, he busied himself in pursuit of an imaginary one; and that he built a Chalcedon, though he had a Byzantium before his eyes.

CHAP.

CHAP. VII.

Of the Monarchies we are acquainted with.

BOOK XI. Chap. 7.

THE monarchies we are acquainted with, have not, like that we have been ſpeaking of, liberty for their direct view: their only aim is the glory of the ſubject, of the ſtate, and of the Sovereign. But from hence there reſults a ſpirit of liberty, which in thoſe ſtates is capable of atchieving as great things, and of contributing as much perhaps to happineſs, as liberty itſelf.

Here the three powers are not diſtributed and founded on the model of the conſtitution abovementioned; they have each a particular diſtribution, according to which they border more or leſs on political liberty; and if they did not border upon it, monarchy would degenerate into deſpotic government.

CHAP. VIII.

Why the ancients had not a clear idea of Monarchy.

THE ancients had no notion of a government founded on a body of nobles, and much leſs on a legiſlative body compoſed of the repreſentatives of the people. The republics of Greece and Italy were cities that had each their own form of government, and convened their ſubjects within their walls. Before Rome had ſwallowed up all the other repulics, there was ſcarce any where a king to be found, no, not in Italy, Gaul, Spain, or Germany; they were all petty ſtates, or republics. Even Africa itſelf was ſubject

ject to a great commonwealth: and Aſia-minor was occupied by Greek colonies. There was therefore no inſtance of deputies of towns or aſſemblies of the ſtates; one muſt have gone as far as Perſia to find a monarchy.

I am not ignorant that there were confederate republics; in which ſeveral towns ſent deputies to an aſſembly. But I affirm there was no monarchy on that model.

The firſt plan therefore of the monarchies we are acquainted with, was thus formed. The German nations that conquered the Roman empire, were certainly a free people. Of this we may be convinced only by reading Tacitius *On the Manners of the Germans*. The conquerors ſpread themſelves over all the country; living moſtly in the fields, and very little in towns. When they were in Germany, the whole nation was able to aſſemble. This they could no longer do, when diſperſed through the conquered provinces. And yet as it was neceſſary that the nation ſhould deliberate on public affairs, purſuant to their uſual method before the conqueſt; they had recourſe to repreſentatives. Such is the origin of the Gothic government amongſt us. At firſt it was mixt with ariſtocracy and monarchy; a mixture attended with this inconveniency, that the common people were bond-men. The cuſtom afterwards ſucceeded of granting letters of infranchiſement, and was ſoon followed by ſo perfect a harmony between the civil liberty of the people, the privileges of the nobility and clergy, and the prince's prerogative, that I really think there never was in the world a government ſo well tempered, as that of each

Book XI. Chap. 9.

each part of Europe, ſo long as it laſted. Surprizing, that the corruption of the government of a conquering nation, ſhould have given birth to the beſt ſpecies of conſtitution that could poſſibly be imagined by man!

CHAP. IX.

Ariſtotle's manner of thinking.

(k) Polit. Book 3. Chap. 14.

ARISTOTLE is greatly puzzled in treating of monarchy (k). He makes five ſpecies; and he does not diſtinguiſh them by the form of conſtitution, but by things merely accidental, as the virtues and vices of the prince; or by things extrinſical, ſuch as tyranny uſurped or inherited.

Among the number of monarchies, he ranks the Perſian empire and the kingdom of Sparta. But is it not evident, that the one was a deſpotic ſtate and the other a republic?

The ancients, who were ſtrangers to the diſtribution of the three powers in the government of a ſingle perſon, could never form a juſt idea of monarchy.

CHAP. X.

What other Politicians thought.

(l) See Juſtin. Book 17.

(m) Ariſt. Polit. Book 5. Chap. 8.

TO temper monarchy, Arybas, king (l) of Epirus, found no other remedy than a republic. The Moloſſi, not knowing how to limit the ſame power, made two kings (m), by which means the ſtate was weakened more than the prerogative

rogative; they wanted rivals, and they created enemies. Book XI. Chap. 11.

Two kings were tolerable no where but at Sparta; here they did not form, but were only a part of the conſtitution.

CHAP. XI.

Of the Kings *of the heroic Times of Greece.*

IN the heroic times of Greece, a kind of monarchy aroſe that was not of long duration (f). Thoſe who had been inventors of arts, who had fought in their country's cauſe, who had eſtabliſhed ſocieties, or diſtributed lands among the people, obtained the regal power, and tranſmitted it to their children. They were kings, prieſts, and judges. This is one of the five ſpecies of monarchy mentioned by Ariſtotle (g); and the only one that can give us any idea of the monarchical conſtitution. But the plan of this conſtitution is oppoſite to that of our modern monarchies.

(f) Ariſtot. Polit. Book 3. Chap. 14.

(g) Ibid.

The three powers were there diſtributed in ſuch a manner, that the people were the legiſlature (h), and the king had the executive together with the judiciary power; whereas in modern monarchies the prince is inveſted with the executive and legiſlative powers, or at leaſt with part of the legiſlative, but does not act in a judiciary capacity.

(h) See what Plutarch ſays in the Life of *Theſeus*. See likewiſe Thucydides. Book 1.

In the government of the kings of the heroic times, the three powers were ill diſtributed. Hence thoſe monarchies could not long ſubſiſt. For as ſoon as the people got the legiſlative power into their hands, they might, as they every where did,

Book XI. Chap. 11.

did, upon the very leaſt caprice, ſubvert the regal authority.

Among a free people poſſeſſed of the legiſlative power, and encloſed within walls, where every thing tending towards oppreſſion appears ſtill more odious, it is the maſter-piece of legiſlation to know where to place properly the judiciary power. But it could not be in worſe hands than in thoſe of the perſon, to whom the executive power had been already committed. From that very inſtant the monarch became terrible. But at the ſame time as he had no ſhare in the legiſlature, he could make no defence againſt it; thus his power was in one ſenſe too great, in another too little.

They had not as yet diſcovered that the true function of a prince was to appoint judges, and not to ſit as judge himſelf. The oppoſite policy rendered the government of a ſingle perſon inſupportable. Hence all theſe kings were baniſhed. The Greeks had no notion of the proper diſtribution of the three powers in the government of one perſon; they could ſee it only in that of many; and this kind of conſtitution they diſtinguiſhed by the name of *Polity* (b)

(b) Ariſtot. Polit. Book 4. Chap. 8.

CHAP. XII.

Of the Government of the Kings of Rome, and in what Manner the three Powers were there diſtributed.

THE government of the kings of Rome had ſome relation to that of the kings of the heroic times of Greece. Its ſubverſion, like the latter's,

latter's, was owing to its general defect, though in its own particular nature, it was exceeding good. BOOK XI. Chap. 12.

In order to give an adequate idea of this government, I ſhall diſtinguiſh that of the five firſt kings, that of Servius Tullius, and that of Tarquin.

The crown was elective, and under the five firſt kings the ſenate had the greateſt ſhare in the election:

Upon the king's deceaſe the ſenate examined whether they ſhould continue the eſtabliſhed form of government. If they thought proper to continue it, they named a magiſtrate (b) taken from their own body who choſe a king; the ſenate were to approve of the election, the people to confirm it, and the augurs to declare the approbation of the Gods. If any of theſe three conditions was wanting, they were obliged to proceed to another election.

The conſtitution was a mixture of monarchy, ariſtocracy, and democracy; and ſuch was the harmony of power, that there was no inſtance of jealouſy or diſpute in the firſt reigns. The king commanded the armies, and had the direction of the ſacrifices; he had the power of determining (c) civil and criminal (d) cauſes; he called the ſenate together, convened the people, laid ſome affairs before the latter, and regulated the reſt with the ſenate *.

The authority of the ſenate was very great. The kings oftentimes pitched upon ſenators with whom

(b) Dionyſ. Halicarn. book 2. p. 120. & book 4. p. 242. & 243.

(c) See *Tanaquil's* diſcourſe on Livy. book 1. dec. 1. and the regulations of Servius Tullius in Dionyſ. Halicarn. book 4. p. 229.

(d) See Dionyſ. Halicarn. book 2. p. 118. and book 3. p. 171.

* It was by virtue of a ſenatus conſultum, that Tullius Hoſtilius ordered Alba to be deſtroyed. Dyoniſ. Halicarn. book 3. p. 167, & 172.

Book XI. Chap. 12.

they ſat in judgement; and they never laid any affair before the people, till it had been previouſly debated † in that auguſt aſſembly.

The people had the right of chuſing ‡ magiſtrates, of conſenting to the new laws, and, with the king's permiſſion, of making war and peace: But they had not the judicial power. When Tullius Hoſtilius referred the trial of Horatius to the people, he had his particular reaſons, which may be ſeen in Dionyſius Halicarnaſſeus (a).

(a) Book 3. p. 159.

(b) Dionyſ. Halicarn. book 4.

The conſtitution altered under (b) Servius Tullius. The ſenate had no ſhare in his election; he cauſed himſelf to be proclaimed by the people; he reſigned the power of hearing civil cauſes ‖, reſerving none to himſelf but thoſe of a criminal nature; he laid all affairs directly before the people, eaſed them of the taxes, and impoſed the whole burthen on the Patricians. Hence in proportion as he weakened the regal together with the ſenatorian power, he augmented that of the Plebeians §.

Tarquin would neither be choſen by the ſenate nor by the people; he conſidered Servius Tullius as an uſurper, and ſeized the crown as his hereditary right. He deſtroyed moſt of the ſenators; thoſe

† Ibid. book 4. p. 276.

‡ Ibid. book 2. And yet they could not have the nomination of all offices, ſince Valerius Publicola made that famous law, by which every citizen was forbid to exerciſe any employment, unleſs he had obtained it by the ſuffrage of the people.

‖ He diveſted himſelf of half the regal power, ſays Dionyſ. Halicarn. book 4. p. 229.

§ It was thought that if he had not been prevented by Tarquin, he would have eſtabliſhed a popular government. Dionyſ. Halicarn. book 4. p. 243.

who

who remained he never conſulted; nor did he even ſo much as ſummon them to aſſiſt at his deciſions (ε). Thus his power increaſed: but the odium of that power received a new addition, by uſurping alſo the authority of the people, againſt whoſe conſent he enacted ſeveral laws. The three powers were by theſe means reunited in his perſon; but the people at a critical minute recollected that they were legiſlators, and there was an end of Tarquin.

(ε) Dionyſ. Halicarn. book 4.

CHAP. XIII.

General Reflexions on the State of Rome after the Expulſion of its Kings.

IT is impoſſible to be tired of ſo agreeable a ſubject as ancient Rome: thus ſtrangers at preſent leave the modern palaces of that celebrated capital to viſit the ruins; and thus the eye after recreating itſelf with the view of flowery meads, is pleaſed with the wild proſpect of rocks and mountains.

The patrician families were at all times poſſeſſed of great privileges. Theſe diſtinctions, which were conſiderable under the kings, became much more important after their expulſion. Hence aroſe the jealouſy of the Plebeians, who wanted to reduce them. The conteſt ſtruck at the conſtitution without weakening the government; for it was very indifferent of what family were the magiſtrates, provided the magiſtracy preſerved its authority.

An elective monarchy like that of Rome, neceſſarily ſuppoſeth a powerful ariſtocratic body to

Book XI. Chap. 13.

ſupport it; without which it changes immediately into tyranny or into a popular ſtate. But a popular ſtate has no need of this diſtinction of families to maintain itſelf. To this it was owing that the Patricians, who were a neceſſary part of the conſtitution under the regal government, became a ſuperfluous branch under the conſuls: the people could ſuppreſs them without hurting themſelves, and change the conſtitution without corrupting it.

After Servius Tullius had reduced the Patricians, it was natural that Rome ſhould fall from the regal hands into thoſe of the people. But the people had no occaſion to be afraid of relapſing under a regal power, by reducing the Patricians.

A ſtate may alter two different ways, either by the amendment or by the corruption of the conſtitution. If it has preſerved its principles and the conſtitution changes, this is owing to its amendment; if upon changing the conſtitution its principles are loſt, this is becauſe it has been corrupted.

The government of Rome after the expulſion of the kings, ſhould naturally have been a democracy. The people had already the legiſlative power in their hands; it was their unanimous conſent that had expelled the Tarquins: and if they had not continued ſteady to thoſe principles, the Tarquins might eaſily have been reſtored. To pretend that their deſign in expelling them was to render themſelves ſlaves to a few families, is quite abſurd. The ſituation therefore of things required that Rome ſhould have formed a democracy, and yet this did not happen. There was a neceſſity

ceſſity that the power of the principal families ſhould be tempered, and that the laws ſhould have a biaſs to democracy.

The proſperity of ſtates is frequently greater in the inſenſible tranſition from one conſtitution to another, than in either of thoſe conſtitutions. Then it is that all the ſprings of government are upon the ſtretch, that the citizens aſſert their claims, that friendſhips or enmities are formed amongſt the jarring parties, and that there is a noble emulation between thoſe who defend the ancient, and thoſe who are ſtrenuous in promoting the new conſtitution.

CHAP. XIV.

In what manner the diſtribution of the three Powers began to change after the Expulſion of the Kings.

THERE were four things that greatly prejudiced the liberty of Rome. The patricians had engroſſed to themſelves all public employments whatever; an exorbitant power was annexed to the conſulate; the people were often inſulted; and in fine they had ſcarce any influence at all left in the public ſuffrages. Theſe four abuſes were redreſſed by the people.

1ſt. It was regulated that the plebeians might aſpire to ſome magiſtracies; and by degrees they were rendered capable of them all, except that of *Inter-rex*.

2d. The conſulate was diſſolved into ſeveral other magiſtracies (c); prætors were created, on whom the power was conferred of trying private cauſes; (c) Livy, 1 Decad. book 6.

BOOK XI. Chap. 14.

quæſtors * were nominated for determining thoſe of a criminal nature; ædiles were eſtabliſhed for the civil adminiſtration; treaſurers (d) were made for the management of the public money; and in fine by the creation of Cenſors the conſuls were diveſted of that part of the legiſlative power which regulates the morals of the citizens, and the tranſient polity of the different bodies of the ſtate. The chief privileges left them were to preſide in the great meetings † of the people, to aſſemble the ſenate, and to command the armies.

(d) Plutarch *Life of Publicola*.

3d. The ſacred laws appointed tribunes who had a power of checking the incroachments of the patricians, and prevented not only private, but likewiſe public injuries.

In fine the plebeians increaſed their influence in the general aſſemblies. The people of Rome were divided in three different manners, by centuries, by curiæ, and by tribes; and whenever they gave their votes, they were convened one of thoſe three ways.

In the firſt the patricians, the leading men, the rich, and the ſenate, which was very near the ſame thing, had almoſt the whole authority; in the ſecond they had leſs; and leſs ſtill in the third.

The diviſion into centuries was a diviſion rather of eſtates and fortunes, than of perſons. The whole people were diſtributed into a hundred and ninety-three centuries (e), which had each a ſingle vote. The patricians and leading men compoſed the firſt ninety-eight centuries; and the other ninety-five conſiſted of the remainder of the citi-

(e) See Livy book 1, and Dionyſ. Halicarn. book 4, and 7.

* *Quæſtores parricidii*, Pomponius, leg. 2. ff. de orig. Jur.

† *Comitiis centuriatis*.

zens,

zens. In this diviſion therefore the patricians were maſters of the ſuffrages. BOOK XI. Chap. 14.

In the diviſion into curiæ (o), the patricians had not the ſame advantages: ſome however they had, for it was neceſſary to conſult the augurs, who were under the direction of the patricians; and no propoſal could be made there to the people, unleſs it had been previouſly laid before the ſenate, and approved of by a ſenatus conſultum. But in the diviſion into tribes they had nothing to do either with the augurs or with the decrees of the ſenate; and the patricians were excluded.

(o) Dionyſ. Halicarn. book 9. p. 598.

Now the people endeavoured conſtantly to have thoſe meetings by curiæ which had been cuſtomary by centuries; and by tribes, thoſe they uſed to have before by curiæ; by which means the direction of public affairs ſoon devolved from the patricians to the plebeians.

Thus when the plebeians obtained the power of trying the patricians, a power which commenced in the affair of Coriolanus (p), they inſiſted upon aſſembling by tribes *, and not by centuries: and when the new magiſtracies (q) of tribunes and ædiles were eſtabliſhed in favour of the people, the latter obtained that they ſhould meet by curiæ in order to nominate them; and after their power was quite ſettled, they gained (r) ſo far their point as to aſſemble by tribes to proceed to this nomination.

(p) Ibid. book 7.

(q) Dionyſ. Halicarn. book 6, p. 410. and 411.

(r) See Dionyſ. Halicarn. book 9, p. 650.

* Contrary to the ancient cuſtom, as may be ſeen in Dionyſ. Halicarn. book 5. p. 320.

CHAP.

CHAP. XV.

In what manner Rome, in the flouriſhing State of that republic, ſuddenly loſt its Liberty.

Book XI. Chap. 15.

IN the heat of the conteſts between the patricians and the plebeians, the latter inſiſted upon having fixt laws, to the end that the public judgments ſhould no longer be the effect of capricious will or arbitrary power. The ſenate after a great deal of reſiſtance acquieſced; and decemvirs were nominated to compoſe thoſe laws. It was thought proper to grant them an extraordinary power, becauſe they were to give laws to parties, whoſe views and intereſts it was almoſt impoſſible to unite. The nomination of all magiſtrates was ſuſpended; and the decemvirs were choſen in the comitia ſole adminiſtrators of the republic. Thus they found themſeves inveſted with the conſular and the tribunitian power. By one they had the privilege of aſſembling the ſenate, by the other that of convening the people, but they aſſembled neither ſenate nor people. Ten men only of the republic had the whole legiſlative, the whole executive, and the whole judiciary power. Rome ſaw herſelf inſlaved by as cruel a tyranny as that of Tarquin. When Tarquin trampled on the liberty of that city, ſhe was ſeized with indignation at the power he had uſurped; when the decemvirs exerciſed every act of oppreſſion, ſhe was aſtoniſhed at the extraordinary power ſhe had granted.

What a ſtrange ſyſtem of tyranny! a tyranny carried on by men, who had obtained the political and military power, merely from their knowledge

in

in civil affairs; and who at that very juncture stood in need of the courage of those citizens to protect them abroad, who so tamely submitted to domestic oppression. Book XI. Chap. 15.

The spectacle of Virginia's death, whom her father immolated to chastity and liberty, put an end to the power of the decemvirs. Every man became free, because every man had been injured; each shewed himself a citizen, because each had the tye of a parent. The senate and the people resumed a liberty which had been committed to ridiculous tyrants.

No people were so easily moved with public spectacles as the Romans. That of the impurpled body of Lucretia put an end to the regal government. The debtor who appeared in the forum covered with wounds, caused an alteration in the republic. The decemvirs owed their expulsion to the tragedy of Virginia. To condemn Manlius, it was necessary to keep the people from seeing the capitol. Cæsar's bloody garment flung Rome again into slavery.

CHAP. XVI.

Of the legislative Power in the Roman Republic.

THERE were no rights to contest, under the decemvirs: but upon the restoration of liberty, jealousies revived; and so long as the patricians had any privileges left, they were sure to be stripped of them by the plebeians.

The mischief would not have been so great, had the plebeians been satisfied with this success; but they also injured the patricians as citizens. When the

Book XI. Chap. 16.

the people assembled by curiæ or centuries, they were composed of senators, patricians, and plebeians In their disputes the plebeians gained this point (i), that they alone without patricians or senate should enact the laws called plebiscita; and the assemblies in which they were made, had the name of comitia by tribes. Thus there were cases in which the patricians * had no share in the legislative power, but † were subject to the legislation of another body of the state. This was the extravagance of liberty. The people to establish a democracy, acted against the very principles of that government. One would have imagined that so exorbitant a power must have destroyed the authority of the senate. But Rome had admirable institutions. Two of these were especially remarkable; one by which the legislative power of the people was established, and the other by which it was limited.

(i) Dionys. Halicarn. Book 11. p. 725.

The censors, and before them the consuls ‖, modelled and created, as it were, every five years the body of the people; they exercised the legislation on the very part that was possessed of the legislative power. "*Tiberius Gracchus*, says Cicero,

* By the sacred laws, the plebeians had a power of making the plebiscita by themselves, without admitting the patricians into their assembly. Dionys. Halicarn. book 6. p. 410. and book 7. p. 430.

† By the law enacted after the expulsion of the decemvirs, the patricians were made subject to the plebiscita, though they had not a right of voting there. Livy book 3. and Dionys. Halicarn. book 11. p. 725. This law was confirmed by that of Publius Philo the dictator, in the year of Rome, 416. Livy book 8.

‖ In the year 312. of Rome, the consuls performed still the business of surveying the people and their estates, as appears by Dionys. Halicarn. book 11.

" *caused the freedmen to be admitted into the tribes* Book XI.
" *not by the force of his eloquence, but by a word,* Chap. 17.
" *by a gesture; which had he not effected, the re-*
" *public, whose drooping head we are at present*
" *scarce able to uphold, would not even exist.*"

On the other hand, the senate had the power of rescuing as it were, the republic out of the hands of the people, by creating a dictator, before whom the sovereign bowed his head, and the most popular laws were silent *.

CHAP. XVII.

Of the executive Power in the same Republic.

JEalous as the people were of their legislative power, yet they had no great uneasiness about the executive. This they left almost intirely to the senate and to the consuls, reserving scarce any thing more to themselves, than the right of chusing the magistrates, and of confirming the acts of the senate and of the generals.

Rome whose passion was to command, whose ambition was to conquer, whose commencement and progress were one continued usurpation, had constantly affairs of the greatest weight upon her hands; her enemies were ever conspiring against her, or she against her enemies.

As she was obliged to behave on the one hand with heroic courage, and on the other with consummate prudence; it was requisite of course that the management of affairs should be committed to the senate. Thus the people disputed every branch

* Such as those by which it was allowed to appeal from the decisions of all the magistrates to the people.

of

BOOK XI. Chap. 17.

of the legiſlative power with the ſenate, becauſe they were jealous of their liberty; but they had no diſputes about the executive, becauſe they were animated with the love of glory.

So great was the ſhare the ſenate took in the executive power, that, as Polybius (c) informs us, foreign nations imagined that Rome was an ariſtocracy. The ſenate diſpoſed of the public money, and farmed out the revenue; they were arbiters of the affairs of their allies; they determined war or peace, and directed, in this reſpect, the conſuls; they fixed the number of the Roman and of the allied troops, diſpoſed of the provinces and armies to the conſuls or prætors, and upon the expiration of the year of command, had the power of appointing ſucceſſors; they decreed triumphs, received and ſent embaſſies; they nominated, rewarded, puniſhed, and were judges of kings, declared them allies of the Roman people, or ſtripped them of that title.

(c) Book 6.

The conſuls levied the troops which they were to carry into the field; had the command of the forces by ſea and land; diſpoſed of the forces of the allies; were inveſted with the whole power of the republic in the provinces; gave peace to the vanquiſhed nations, impoſed conditions on them, or referred them to the ſenate.

In the earlieſt times, when the people had ſome ſhare in the affairs relating to war or peace, they exerciſed rather their legiſlative than their executive power. They ſcarce did any thing elſe but confirm the acts of the kings, and after their expulſion, thoſe of the conſuls or ſenate. So far were they from being the arbiters of war, that we have

have instances of its having been often declared notwithstanding the opposition of the tribunes. But growing wanton in their prosperity, they increased their executive power. Thus they * created the military tribunes, the nomination of whom till then had belonged to the generals; and some time before the first Punic war, they decreed, that only their own body should have the right † of declaring war. BOOK XI. Chap. 18.

CHAP. XVIII.

Of the judiciary Power in the Roman Government.

THE judiciary power was given to the people, to the senate, to the magistrates, and to particular judges. We must see in what manner it was distributed; beginning with their civil affairs.

The consuls had ‡ the judiciary power after the expulsion of the kings, as the prætors were judges after the consuls. Servius Tullius had divested himself of the power of detemining of civil causes, which was not resumed by the consuls, except in some ‖ very rare cases, for that reason called

* In the year of Rome 444. Livy 1. Decad. book 9. As the war against Perseus appeared somewhat dangerous, it was ordained by a senatus-consultum, that this law should be suspended, and the people agreed to it. Livy Dec. 5. book 2.

† They extorted it from the senate, says *Freinshemius*, Dec. 2. Book 6.

‡ There is no manner of doubt but the consuls had the power of trying civil causes before the creation of the prætors. See Livy Dec. 1. book 2. p. 19. Dionys. Halicarn. book 10. p. 627. and the same book p. 645.

‖ The tribunes frequently tried causes by themselves only, but nothing rendered them more odious. Dionys. Halicarn. book 11. p. 709.

BOOK XI. Chap. 18. (d) Book 6. p. 360.

extraordinary *. They were satisfied with naming the judges, and establishing the several tribunals. By a discourse of *Appius Claudius*, in Dionysius (d) Halicarnasseus, it appears that so early as the 259th year of Rome, this was looked upon as a settled custom among the Romans; and it is not tracing it very high, to refer it to Servius Tullius.

Every year the prætor made a list † of such as he chose for the office of judges during his magistracy. A sufficient number was pitched upon for each cause; a custom very near the same as that now practised in England. And what was extremely favourable to liberty ‡, was the prætor's fixing the judges with the ‖ consent of the parties. The great number of exceptions that can be made in England, amounts pretty near to this very custom.

(e) Seneca de Benefic. lib. 3. cap. 7. *in fine.* (f) See Quintilian lib. 4. p. 54. in fol. edit. of Paris, 1541.

The judges decided only the questions (e) relating to matter of fact, for example, whether a sum of money had been paid or not, whether an act had been committed, or not. But as to questions of (f) law, as these required a certain capacity, they were always carried before the tribunal of the centumvirs §.

* *Judicia extraordinaria.* See the institutes. book 4.

† *Album Judicium.*

‡ "Our ancestors, says *Cicero pro Cluentio*, would not suffer "any man, whom the parties had not agreed to, to be judge "of the least pecuniary affair, much less of a citizen's repu- "tation."

‖ See in the fragments of the Servilian, Cornelian, and other laws, in what manner these laws appointed judges for the crimes they proposed to punish. They were often pitched upon by choice, sometimes by lot, or in fine, by lot, mixt together with choice.

§ *Leg. 2. ff. de Orig. Jur.* Magistrates who were called decemvirs, presided in court, the whole under a prætor's direction.

The

The kings reſerved to themſelves the judgment of criminal affairs, and in this were ſucceeded by the conſuls. It was in conſequence of this authority, that *Brutus* put his children and all thoſe who were concerned in the Tarquinian conſpiracy to death. This was an exorbitant power. The conſuls, already inveſted with the military command, extended the exerciſe of it even to civil affairs; and their procedures being ſtripped of all forms of juſtice, were rather exertions of violence than legal judgments.

This gave riſe to the *Valerian* law, by which it was made lawful to appeal to the people, from every deciſion of the conſuls that endangered the life of a citizen. The conſuls had no longer a power of pronouncing ſentence in capital caſes againſt a Roman citizen, without the conſent of the people *.

We ſee in the firſt conſpiracy for the reſtoration of the Tarquins, that the criminals were tried by Brutus the conſul; in the ſecond, the ſenate and comitia were aſſembled to try them (s).

(s) Dionyſ. Halicarn. Book 5. p. 322.

The laws diſtinguiſhed by the name of *Sacred*, allowed the plebeians the privilege of chuſing tribunes; from whence was formed a body, whoſe pretenſions at firſt were immenſe. It is hard to determine which was greater, the inſolence of the plebeians in demanding, or the condeſcenſion of the ſenate in granting. The Valerian law allowed of appeals to the people, that is, to the people compoſed of ſenators, patricians, and plebeians. The

* Quoniam de capite civis Romani, injuſſu populi Romani, non erat permiſſum conſulibus jus dicere. See Pomponius *Leg.* 2. *ff. de orig. jur.*

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plebeians made a law that appeals ſhould be brought before their own body. A queſtion was ſoon after ſtarted, whether the plebeians had a right to try a patrician; this was the ſubject of a diſpute to which the impeachment of Coriolanus gave riſe, and which ended with that affair. When Coriolanus was accuſed by the tribunes before the people, he inſiſted, contrary to the ſpirit of the Valerian law, that as he was a patrician, none but the conſuls had a power to try him; on the other hand, the plebeians alſo, contrary to the ſpirit of that ſame law, pretended, that none but their body were empowered to be his judges, and accordingly they pronounced ſentence upon him.

This was moderated by the law of the twelve tables; whereby it was ordained that none but the *great aſſemblies* of the people * ſhould try a citizen in capital caſes. Hence the body of the plebeians, or which amounts to the very ſame, the comitia by tribes, had no longer any power of hearing criminal cauſes, except ſuch as were puniſhed with fines. To inflict a capital puniſhment a *law* was requiſite; but to condemn to a pecuniary mulct, there was occaſion only for a *Plebiſcitum.*

This regulation of the law of the twelve tables was extremely prudent. It produced an admirable balance between the body of the plebeians and the ſenate. For as the full judiciary power of both depended on the greatneſs of the puniſhment and the nature of the crime, it was neceſſary they ſhould both agree.

* The Comitia by centuries. Thus Manlius Capitolinus was tried in theſe Comitia. Livy Dec. 1. book 6. p. 60.

The

The Valerian law abolished all the remains of the Roman government, any way relative to that of the kings of the heroic times of Greece. The consuls were divested of the power to punish crimes. Though all crimes are public, yet we must distinguish between those which more nearly concern the mutual intercourse of citizens, and those which more immediately interest the state in the relation it bears to its subjects. The first are called private, the second public. The latter were tried by the people; and in regard to the former, they named by particular commission a quæstor for the prosecution of each crime. The person chosen by the people was frequently one of the magistrates, sometimes a private man. He was called the *quæstor of Parricide*, and is mentioned in the law of the twelve tables (f).

(f) *Pomponius*, in the second Law in the Digest de Orig. Jur.

The quæstor nominated the judge of the question, who drew lots for the judges, and regulated the tribunal, in which he presided *.

Here it is proper to observe what share the senate had in the nomination of the quæstor, that we may see how far the two powers were balanced. Sometimes the senate caused a dictator to be chosen, in order to exercise the office of quæstor †; at other times they ordained that the people should be convened by a tribune, with a view of proceeding to the nomination of a quæstor ‡: and in fine

* See a fragment of Ulpian, who gives another of the Cornelian law: it is to be met with in the *Collation of the Mosaic and Roman laws*, tit. 1. de sicariis & homicidiis.

† This took place especially in regard to crimes committed in Italy, which were subject chiefly to the inspection of the senate. See Livy 1. Dec. book 9. concerning the conspiracies of Capua.

‡ This was the case in the prosecution for the murder of Posthumius, in the year 340 of Rome. See Livy.

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the people frequently appointed a magiſtrate to make his report to the ſenate concerning a particular crime, and to deſire them to name a quæſtor, as may be ſeen in the judgment upon *Lucius Scipio* § in Livy (ᵉ).

(ᵉ) Book 8.

In the year of Rome 604, ſome of theſe commiſſions were rendered permanent (ʰ). All criminal cauſes were gradually divided into different parts; to which they gave the name of *perpetual queſtions*. Different prætors were created, to each of whom ſome of thoſe queſtions were aſſigned. They had a power conferred upon them for the term of a year, of trying ſuch criminal cauſes as were any way relative to thoſe queſtions, and then they were ſent to govern their province.

(ʰ) Cicero in Brato.

At Carthage the ſenate of the hundred was compoſed of judges who enjoyed that dignity for life *. But at Rome the prætors ware annual; and the judges were not even for ſo long a term, but were nominated for each cauſe. We have already ſhewn in the ſixth chapter of this book, how favourable this regulation was to liberty in particular governments.

The judges were choſen from the order of ſenators, till the time of the Gracchi. *Tiberius Gracchus* cauſed a law to paſs that they ſhould be taken from the Equeſtrian order; a change ſo very conſiderable, that the tribune boaſted of having cut, by one *rogation* only, the ſinews of the ſenatorian dignity.

§ This judgment was paſſed in the year of Rome, 567.

* This is proved from Livy, book 43, who ſays that Hannibal rendered their magiſtracy annual.

It

It is neceſſary to obſerve that the three powers may be very well diſtributed in regard to the liberty of the conſtitution, though not ſo well in reſpect to the liberty of the ſubject. At Rome the people had the greateſt ſhare of the legiſlative, a part of the executive, and part of the judiciary power; by which means they had ſo great a weight in the government, as required ſome other power to balance it. The ſenate indeed had part of the executive power, and ſome ſhare of the legiſlative *; but this was not ſufficient to counterbalance the weight of the people. It was neceſſary that they ſhould partake of the judiciary power; and accordingly they had a ſhare when the judges were choſen from among the ſenators. But when the Gracchi deprived the ſenators of the judicial power (h), the ſenate were no longer able to withſtand the people. To favour therefore the liberty of the ſubject they ſtruck at that of the conſtitution; but the former periſhed with the latter.

(h) In the year 630.

Infinite were the miſchiefs that from thence aroſe. The conſtitution was changed at a time when the fire of civil diſcord had ſcarce left any ſuch thing as a conſtitution. The knights ceaſed to be that middle order which united the people to the ſenate; and the chain of the conſtitution was broke.

There were even particular reaſons againſt tranſferring the judiciary power to the equeſtrian order. The conſtitution of Rome was founded on this principle, that none ſhould be inliſted as ſoldiers,

* The ſenatus-conſultums were of force for the ſpace of a year, though not confirmed by the people. Dionyſ. Halicarn. book 9, p. 595, and book 11. p. 735.

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but ſuch as were men of ſufficient property to anſwer for their conduct to the republic. The knights as perſons of the greateſt property formed the cavalry of the legions. But when their dignity increaſed, they refuſed to ſerve any longer in that capacity; and another kind of cavalry was obliged to be raiſed: thus Marius inliſted all ſorts of people into his army, and ſoon after the republic was loſt (k).

(k) *Capite cenſos plerosque* Salluſt. de bello Jugurth.

Beſides the knights were the farmers of the revenue; men whoſe great rapaciouſneſs increaſed the public calamities. Inſtead of giving to ſuch as thoſe the judicial power, they ought to have been conſtantly under the eye of the judges. This we muſt ſay in commendation of the ancient French laws; that they have acted towards the officers of the revenue, with as great a diffidence as would be obſerved between enemies. When the judiciary power at Rome was transferred to the publicans, there was then an end of all virtue, polity, laws, and government.

(l) Fragment of this author book 36, in the collection of Conſtantine Porphyrogenitus of *virtues and vices.*

Of this we find a very ingenious deſcription in ſome fragments of Diodorus Siculus and Dio. "*Mutius Scevola*, ſays Diodorus (l), *wanted to revive the ancient manners and the laudable cuſtom of ſober and frugal living. For his predeceſſors having entered into a contract with the farmers of the revenue, who at that time were poſſeſſed of the judiciary power at Rome, had infected the province with all manner of corruption. But Scevola made an example of the publicans, and impriſoned thoſe by whom others had been confined.*"

(m) Fragment of his hiſtory, taken from the *Extract of virtues and vices.*

Dio informs us (m), that Publius Rutilius his lieutenant, was equally obnoxious to the equeſtrian order,

order; and that upon his return they accuſed him of having received ſome preſents, and condemned him to a fine; upon which he inſtantly made a ceſſion of his goods. His innocence appeared in this, that he was found to be worth a great deal leſs than what he was charged with having extorted, and he ſhewed a juſt title to what he poſſeſſed: but he would not live any longer in the ſame city with ſuch profligate wretches. Book XI. Chap. 18.

(n) The Italians, ſays Diodorus again, bought up whole droves of ſlaves in Scicily, to till their lands, and to take care of their cattle; but refuſed them a neceſſary ſubſiſtence. Theſe wretches were then forced to go and rob on the high-ways, armed with lances and clubs, covered with beaſts ſkins, and followed by large maſtiffs. Thus the whole province was laid waſte, and the inhabitants could not call any thing their own, but what was ſecured by fortreſſes. There was neither proconſul nor prætor, that could or would oppoſe this diſorder, or that preſumed to puniſh theſe ſlaves, becauſe they belonged to the knights, who at Rome were poſſeſſed of the judiciary power *. And yet this was one of the cauſes of the war of the ſlaves. But I ſhall add only one word more. A profeſſion deaf and inexorable, that can have no other view than lucre, that was always aſking and never granting, that impoveriſhed the rich and increaſed even the miſery of the poor; ſuch a profeſſion, I ſay, ſhould never have been intruſted with the judiciary power at Rome.

(n) Fragment of the 34th book in the *Extract of virtues and vices.*

* Penes quos Romæ tum judicia erant, atque ex equeſtri ordine ſolerent ſortito judices eligi in cauſa Prætorum & Proconſulum, quibus poſt adminiſtratam provinciam dies dicta erat.

CHAP. XIX.

Of the Government of the Roman Provinces.

Book XI. Chap. 19.

SUCH was the diſtribution of the three powers in Rome. But they were far from being thus diſtributed in the provinces: Liberty prevailed in the center, and tyranny in the extreme parts.

While Rome extended her dominions no farther than Italy, the people were governed as confederates; and the laws of each republic were preſerved. But when ſhe enlarged her conqueſts, and the ſenate had no longer an immediate inſpection over the provinces, nor the magiſtrates reſiding at Rome were any longer capable of governing the empire, they were obliged to ſend prætors and proconſuls. Then it was that the harmony of the three powers was loſt. The perſons appointed to that office, were intruſted with a power which comprehended that of all the Roman magiſtracies; nay even that of the people *. They were deſpotic magiſtrates, extremely well adapted to the diſtance of the places to which they were deſtined. They exerciſed the three powers; and were, if I may preſume to uſe the expreſſion, the baſhaws of the republic.

We have elſewhere obſerved that in a commonwealth the ſame magiſtrate ought to be poſſeſſed of the executive power, as well civil as military. Hence a conquering republic can hardly communicate her government, and rule the conquered ſtate according to her own conſtitution. And indeed as the magiſtrate ſhe ſends to govern, is in-

* They made their edicts upon entering the provinces.

veſted

veſted with the executive power, both civil and military, he muſt alſo have the legiſlative: for who is it that could make laws without him? It is neceſſary therefore that the governor ſhe ſends be intruſted with the three powers, as was practiſed in the Roman provinces.

It is more eaſy for a monarchy to communicate its government, becauſe the officers it ſends, have, ſome the civil executive, and others the military executive power; which does not neceſſarily imply a deſpotic authority.

It was a privilege of the utmoſt conſequence to a Roman citizen, to have none but the people for his judges. Were it not for this, he would have been ſubject in the provinces to the arbitrary power of a proconſul or of a prætor. The city never felt the tyranny, which was exerciſed only on conquered nations.

Thus in the Roman world, as at Sparta, the freemen enjoyed the higheſt degree of liberty, while thoſe who were ſlaves laboured under the extremity of ſervitude.

While the citizens paid taxes, they were raiſed with great juſtice and equality. The regulation of Servius Tullius was obſerved, who had diſtributed the people into ſix claſſes, according to their difference of property, and fixed the ſeveral ſhares of the public impoſts in proportion to that which each perſon had in the government. Hence they bore with the greatneſs of the tax, becauſe of their proportionable greatneſs of credit, and conſoled themſelves for the ſmallneſs of their credit, becauſe of the ſmallneſs of the tax.

There

Book XI. Chap. 19.

There was alſo another thing worthy of admiration, which is, that as Servius Tullius's diviſion into claſſes was in ſome meaſure the fundamental principle of the conſtitution, it thence followed that an equal levying of the taxes was ſo connected with this fundamental principle, that the one could not be aboliſhed without the other.

But while the city paid the taxes as ſhe pleaſed, or paid none at all *, the provinces were plundered by the knights, who were the farmers of the public revenue. We have already made mention of their oppreſſive extortions, with which all hiſtory abounds.

(c) Speech taken from Pro-gus Tom-peius, and related by Juſtin, book 38.

"*All Aſia*, ſays Mithridates (c) *expects me as her* "*deliverer*; *ſo great is the hatred which the rapa-*"*cioufneſs of the proconſuls* (d), *the confiſcations made* "*by the officers of the revenue, and the quirks and* "*cavils of judicial proceedings* †, *have excited againſt* "*the Romans.*"

(d) See the orations againſt Verres.

Hence it was that the ſtrength of the provinces did not increaſe, but rather weakened the ſtrength of the republic. Hence it was that the provinces looked upon the loſs of the liberty of Rome as the epocha of their own freedom.

* After the conqueſt of Macedonia the Romans paid no taxes.

† It is well known what ſort of a tribunal was that of Varus, which provoked the Germans to revolt.

CHAP.

CHAP. XX.

The end of this Book.

I Should be glad to inquire into the diſtribution of the three powers, in all the moderate governments we are acquainted with, in order to calculate the degrees of liberty which each may enjoy. But we muſt not always exhauſt a ſubject, ſo as to leave no work at all for the reader. My buſineſs is not to make people read, but to make them think. Book XI. Chap. 20.

BOOK XII.

Of the Laws that form political Liberty, as relative to the Subject.

CHAP. I.

Idea of this BOOK.

BOOK XII. Chap. 1.

IT is not ſufficient to have treated of political liberty as relative to the conſtitution; we muſt examine it likewiſe in the relation it bears to the ſubject.

We have obſerved that in the former caſe it ariſes from a certain diſtribution of the three powers; but in the latter, we muſt conſider it in another light. It conſiſts in ſecurity, or in the opinion people have of their ſecurity.

The conſtitution may happen to be free, and the ſubject not. The ſubject may be free, and not the conſtitution. In thoſe caſes, the conſtitution will be free by right, and not in fact; the ſubject will be free in fact, and not by right.

It is the diſpoſition only of the laws, and even of the fundamental laws, that conſtitutes liberty in relation to the conſtitution. But as it regards the ſubject; manners, cuſtoms, or received examples may give riſe to it, and particular civil laws may encourage it, as we ſhall preſently obſerve.

Farther, as in moſt ſtates, liberty is more checked or depreſſed than their conſtitution requires, it is proper to treat of the particular laws that

that in each conſtitution are apt to aſſiſt or check the principle of liberty, which each ſtate is capable of receiving.

CHAP. II.

Of the Liberty of the Subject.

PHiloſophical liberty conſiſts in the free exerciſe of the will; or at leaſt, if we muſt ſpeak agreeably to all ſyſtems, in an opinion that we have the free exerciſe of our will. Political liberty conſiſts in ſecurity, or at leaſt, in the opinion that we enjoy ſecurity.

This ſecurity is never more dangerouſly attacked than in public or private accuſations. It is therefore on the goodneſs of criminal laws that the liberty of the ſubject principally depends.

Criminal laws did not receive their full perfection all at once. Even in places where liberty has been moſt ſought after, it has not been always found. Ariſtotle (a) informs us, that at Cumæ, the parents of the accuſer might be witneſſes. So imperfect was the law under the kings of Rome, that Servius Tullius pronounced ſentence againſt the children of Ancus Martius, who were charged with having aſſaſſinated the king his father-in-law (b). Under the firſt kings of France, Clotarius made a law (c), that no body ſhould be condemned without being heard; which ſhews that a contrary cuſtom had prevailed in ſome particular caſe or among ſome barbarous people. It was Charondas that firſt eſtabliſhed penalties againſt falſe witneſſes (d). When the ſubject has no fence to ſecure his innocence, he has none for his liberty.

(a) Politics book 2.
(b) Tarquinius Priſcus. See Dionyſius Halicarn. book 4.
(c) So early as the year 560.
(d) Ariſtot. Polit. book 2. chap. 12. He gave his laws at Thurium, in the 84th Olympiad.

Book XII. Chap. 3. and 4.

The knowledge already acquired in ſome countries, or that may be hereafter attained in others, concerning the ſureſt rules to be obſerved in criminal judgments, is more intereſting to mankind than any other thing in the world.

Liberty can be founded on the practice of this knowledge only; and ſuppoſing a ſtate to have the beſt laws imaginable in this reſpect, a perſon tried under that ſtate, and condemned to be hanged the next day, would have much more liberty, than a baſhaw enjoys in Turkey.

CHAP. III.

The ſame Subject continued.

THOSE laws which condemn a man to death on the depoſition of a ſingle witneſs, are fatal to liberty. In right reaſon there ſhould be two, becauſe a witneſs who affirms, and the accuſed who denies, make an equal balance, and a third muſt incline the ſcale.

(e) See Ariſtid. Orat. in Minervam.

(f) Dionyſ. Haliearn. on the judgment of Coriolanus, book 7.

The Greeks (e) and Romans (f) required one voice more to condemn: but our French laws inſiſt upon two. The Greeks pretend that their cuſtom was eſtabliſhed by the Gods *; but this more juſtly may be ſaid of ours.

CHAP. VI.

That Liberty *is favoured by the nature and proportion of Puniſhments.*

LIBERTY is in its higheſt perfection, when criminal laws derive each puniſhment from

* *Minervæ calculus*

the

the particular nature of the crime. There are then no arbitrary deciſions; the puniſhment does not flow from the capriciouſneſs of the legiſlator, but from the very nature of the thing; and man uſes no violence to man.

There are four ſorts of crimes. Thoſe of the firſt ſpecies are prejudicial to religion, the ſecond to morals, the third to the public tranquility, and the fourth to the ſecurity of the ſubject. The puniſhments inflicted for theſe crimes ought to proceed from the nature of each of theſe ſpecies.

In the claſs of crimes that concern religion, I rank only thoſe which attack it directly, ſuch as all ſimple ſacrileges. For as to crimes that diſturb the exerciſe of it, they are of the nature of thoſe which prejudice the tranquillity or ſecurity of the ſubject, and ought to be referred to thoſe claſſes.

In order to derive the puniſhment of ſimple ſacrileges from the nature of the thing *, it ſhould conſiſt in depriving people of the advantages conferred by religion in expelling them out of the temples, in a temporary or perpetual excluſion from the ſociety of the faithful, in ſhunning their preſence, in execrations, comminations, and conjurations.

In things that prejudice the tranquillity or ſecurity of the ſtate, ſecret actions are ſubject to human juriſdiction. But in thoſe which offend the Deity, where there is no public act, there can be no criminal matter; the whole paſſes betwixt man and God,

* St. Lewis made ſuch ſevere laws againſt thoſe who ſwore, that the pope thought himſelf obliged to admoniſh him for it. This prince moderated his zeal, and ſoftened his laws (z).

(z) See his Ordinances.

Book XII. Chap. 4.

God, who knows the meaſure and time of his vengeance. Now if magiſtrates confounding things, ſhould inquire alſo into hidden ſacrileges, this inquiſition would be directed to a kind of action that does not at all require it; the liberty of the ſubject would be ſubverted by arming the zeal of timorous, as well as of preſumptuous conſciences againſt him.

The miſchief ariſes from a notion which ſome people have entertained of revenging the cauſe of the Deity. But we muſt honor the Deity, and leave him to avenge his own cauſe. And indeed, were we to be directed by ſuch a notion, where would be the end of puniſhments? If human laws are to avenge the cauſe of an infinite Being, they will be directed by his infinity, and not by the weakneſs, ignorance, and caprice of man.

(h) Father Bougerel.

An hiſtorian (h) of Provence relates a fact, which furniſhes us with an excellent deſcription of the conſequences that may ariſe in weak capacities from the notion of avenging the Deity's cauſe. A Jew was accuſed of having blaſphemed againſt the Virgin Mary; and upon conviction, was condemned to be flead alive. A ſtrange ſpectacle was then exhibited; gentlemen maſked, with knives in their hands, mounted the ſcaffold, and drove away the executioner, in order to be the avengers themſelves of the honor of the bleſſed Virgin.—I do not here chuſe to anticipate the reflections of the reader.

The ſecond claſs conſiſts of thoſe crimes which are prejudicial to morals. Such is the violation of public or private continence, that is of the police directing the manner in which the pleaſure annexed

to

to the conjunction of the ſexes is to be enjoyed. The puniſhment of thoſe crimes ought to be alſo derived from the nature of the thing; the privation of ſuch advantages as ſociety has attached to the purity of morals, fines, ſhame, neceſſity of concealment, public infamy, expulſion from home and ſociety, and in fine all ſuch puniſhments as belong to a corrective juriſdiction, are ſufficient to repreſs the temerity of the two ſexes. In effect, theſe things are leſs founded on malice, than on careleſſneſs and ſelf neglect.

We ſpeak here of none but crimes which relate merely to morals, for as to thoſe that are alſo prejudicial to the public ſecurity, ſuch as rapes, they belong to the fourth ſpecies.

The crimes of the third claſs are thoſe which diſturb the public tranquillity. The puniſhments ought therefore to be derived from the nature of the thing, and to be relative to this tranquillity; ſuch as impriſonment, exile, and other-like chaſtiſements, proper for reclaiming turbulent ſpirits, and obliging them to conform to the eſtabliſhed order.

I confine thoſe crimes that injure the public tranquillity to things which imply a bare offence againſt the police; for as to thoſe which by diſturbing the public peace, attack at the ſame time the ſecurity of the ſubject, they ought to be ranked in the fourth claſs.

The puniſhments inflicted upon the latter crimes are ſuch as are properly diſtinguiſhed by that name. They are a kind of retaliation, by which the ſociety refuſes ſecurity to a member, who has actually or intentionally deprived another of his ſecurity. Theſe puniſhments are derived from the nature of

the thing, founded on reaſon, and drawn from the very ſource of good and evil. A man deſerves death when he has violated the ſecurity of the ſubject ſo far as to deprive, or to attempt to deprive another man of his life. This puniſhment of death is the remedy, as it were, of a ſick ſociety. When there is a breach of ſecurity with regard to property, there may be ſome reaſons for inflicting a capital puniſhment: but it would be much better, and perhaps more natural, that crimes committed againſt the ſecurity of property ſhould be puniſhed with the loſs of property; and this ought indeed to be the caſe if men's fortunes were common or equal. But as thoſe who have no property of their own are generallly the readieſt to attack that of others, it has been found neceſſary, inſtead of a pecuniary, to ſubſtitute a corporal puniſhment.

All that I have here advanced, is founded in nature, and extremely favourable to the liberty of the ſubject.

CHAP. V.

Of certain Accuſations that require particular Moderation and Prudence.

IT is an important *maxim*, that we ought to be very circumſpect in the proſecution of witchcraft and hereſy. The accuſation of theſe two crimes may be vaſtly injurious to liberty, and productive of infinite oppreſſion, if the legiſlator knows not how to ſet bounds to it. For as it does not directly point at a perſon's actions, but at his character, it grows dangerous in proportion to the ignorance of the people;

ple; and then a man is sure to be always in danger, because the most unexceptionable conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of his being guilty of the like crimes.

Under Manuel Comnenus, the *Protestator* (i) was accused of having conspired against the emperor, and of having employed for that purpose some secrets that render men invisible. It is mentioned in the life of this emperor (k) that *Aaron* was detected, as he was poring over a book of Solomon's, the reading of which was sufficient to conjure up whole legions of devils. Now by supposing a power in witchcraft to rouse the infernal spirits to arms, people look upon a man whom they call a sorcerer as the person in the world most likely to disturb and subvert society; and of course, they are disposed to punish him with the utmost severity.

(i) *Nicetas*, life of Manuel Comnenus, Book 4.

(k) Ibid.

But their indignation increases, when witchcraft is supposed to have a power of subverting religion. The history of Constantinople (l) informs us, that in consequence of a revelation made to a bishop of a miracle's having ceased because of the magic practices of a certain person, both that person and his son were put to death. On how many surprizing things did not this single crime depend? That revelations should not be uncommon, that the bishop should be favoured with one, that it was real, that there had been a miracle in the case, that this miracle had ceased, that there was an art magic, that magic could subvert religion, that this particular person was a magi-

(l) History of the emperor Maurice by *Theophylactus*, Chap. 11.

BOOK XII. Chap. 6.

cian, and, in fine, that he had committed that magic act.

The emperor *Theodorus Laſcaris* attributed his illneſs to witchcraft. Thoſe who were accuſed of this crime, had no other reſource left than to handle a red hot iron without being hurt. Thus among the Greeks a perſon ought to have been a ſorcerer to be able to clear himſelf of the imputation of witchcraft. Such was the exceſs of their ſtupidity, that to the moſt dubious crime in the world, they joined the moſt dubious proofs of innocence.

Under the reign of *Philip the Long*, the Jews were expelled from France, being accuſed of having poiſoned the ſprings with their lepers. So abſurd an accuſation ought to make us doubt of all thoſe that are founded on public hatred.

I have not here aſſerted that hereſy ought not to be puniſhed; I ſaid only that we ought to be extremely circumſpect in puniſhing it.

CHAP. VI.

Of the Crime againſt Nature.

GOD forbid that I ſhould have the leaſt inclination to diminiſh the public horror againſt a crime which religion, morality, and civil government equally condemn. It ought to be proſcribed were it only for its communicating to one ſex the weakneſſes of the other, and for leading people by a ſcandalous proſtitution of their youth, to an ignominious old age. What I ſhall ſay concerning it will no ways diminiſh its infamy, being levelled

levelled only againſt the tyranny that may abuſe the very horror we ought have againſt the vice.

As a natural circumſtance of this crime is ſecrecy, thereare frequent inſtances of its having been puniſhed by legiſlators upon the depoſition of a child. This was opening a very wide door to calumny. "*Juſtinian*, ſays Procopius (m), *publiſhed a law againſt this crime; he ordered an enquiry to be made not only againſt thoſe who were guilty of it, after the enacting of that law, but even before. The depoſition of a ſingle witneſs, ſometimes of a child, ſometimes of a ſlave, was ſufficient, eſpecially againſt ſuch as were rich, and againſt thoſe of the green faction.*"

(m) Secret Hiſtory.

It is very odd that theſe three crimes, witchcraft, hereſy, and that againſt nature, of which the firſt might eaſily be proved not to exiſt; the ſecond to be ſuſceptible of an infinite number of diſtinctions, interpretations, and limitations; the third to be often obſcure and uncertain; it is very odd, I ſay, that theſe three crimes ſhould amongſt us be puniſhed with fire.

I may venture to affirm that the crime againſt nature will never make any great progreſs in ſociety, unleſs people are prompted to it by ſome particular cuſtom, as among the Greeks, where the youths of that country performed all their exerciſes naked; as amongſt us, where domeſtic education is diſuſed; as among the Aſiatics, where particular perſons have a great number of women whom they deſpiſe, while others can have none at all. Let there be no cuſtoms preparatory to this crime; let it like every other violation of morals, be ſeverely proſcribed by the civil magiſtrate; and

BOOK XII. Chap. 7.

nature will ſoon defend or reſume her rights. Nature, that fond, that indulgent parent, has ſtrewed her pleaſures with a bounteous hand, and while ſhe fills us with delights, ſhe prepares us by means of our iſſue, in whom we ſee ourſelves, as it were, reproduced, ſhe prepares us, I ſay, for future ſatisfactions of a more exquiſite kind than thoſe very delights.

CHAP. VII.

Of the Crime of high Treaſon.

IT is determined by the laws of China, that whoſoever ſhews any diſreſpect to the emperor, is to be puniſhed with death. As they do not mention in what this diſreſpect conſiſts, every thing may furniſh a pretext to take away a man's life, and to exterminate any family whatſoever.

Two perſons of that country, who were employed to write the court gazette, having inſerted ſome circumſtances relating to a certain fact that were not true, it was pretended that to tell a lye in the court gazette was a diſreſpect ſhewn to the court, in conſequence of which they were put to death (n). A prince of the blood having inadvertently made ſome mark on a memorial ſigned with the red pencil by the emperor, it was determined that he had behaved diſreſpectfully to the ſovereign; which occaſioned one of the moſt terrible perſecutions againſt that family that ever was recorded in hiſtory (o).

(n) Father Du Halde. Tom. 1. P. 43.

(o) Father Parennin in the edifying letters.

If the crime of high treaſon be indeterminate, this alone is ſufficient to make the government degenerate into arbitary power. I ſhall deſcant more largely

largely on this subject, when I come to treat (p) of the composition of laws. Book XII. Chap. 8.

(p) Book 29.

CHAP. VIII.

Of the bad Application of the Name of Sacrilege and high Treason.

IT is likewise a shocking abuse to give the appellation of high treason to an action that does not deserve it. By an imperial law *, it was decreed that those who called in question the prince's judgment, or doubted of the merit of such as he had chosen for a public office, should be prosecuted as guilty of sacrilege †. Surely it was the cabinet council and the prince's favourites who invented that crime. By another law it was determined, that whosoever made any attempt to injure the ministers and officers belonging to the sovereign, should be deemed guilty of high treason, as if he had attempted to injure the sovereign himself (q). This law is owing to two princes (r), remarkable for their weakness; princes who were led by their ministers, as flocks by shepherds; princes who were slaves in the palace, children in the council, strangers to the army; princes, in fine, who preserved their authority only by giving it away every day. Some of those favourites conspired against their sovereigns. Nay, they did more, they conspired against the empire; they called in barbarous nations; and when the emperors wanted to

(q) The 5th law *ad leg. Jul. Maj.*

(r) Arcadius & Honorius.

* Gratian, Valentinian, and Theodosius. This is the second in the Code de *Crimin. Sacril.*

† *Sacrilegii instar est dubitare an is dignus sit quem elegerit Imperator.* ibid. This law served as a model to that of Roger in the constitutions of Naples, Tit. 4.

BOOK XII. Chap. 8.

ſtop their progreſs, the ſtate was ſo enfeebled, as to be under a neceſſity of infringing the law, and of expoſing itſelf to the crime of high treaſon in order to puniſh thoſe favorites.

And yet this is the very law which the judge of Monſieur de Cinq-Mars built upon (f), when endeavouring to prove that the latter was guilty of the crime of high treaſon, for attempting to remove Cardinal Richelieu from the miniſtry, he ſays, "*Crimes that aim at the perſons of miniſters, are deemed by the Imperial conſtitutions, of equal conſequence with thoſe which are levelled againſt the emperor's own perſon. A miniſter diſcharges his duty to his prince and to his country; to attempt therefore to remove him, is endeavouring to deprive the former of one of his arms* (t), *and the latter of part of its power.*" It is impoſſible for the meaneſt tools of power, to expreſs themſelves in more ſervile language.

(f) Memoirs of Montreſor Tom. 1.

(t) *Namipſi pars corporis noſtri ſunt.* The ſame law of the Code *ad leg. Jul. Maj.*

By another law of Valentinian, Theodoſius, and Arcadius (u), falſe coiners are declared guilty of high treaſon. But is not this confounding the ideas of things? Is not the very horror of high treaſon diminiſhed, by giving that name to another crime?

(u) It is the 9th of the Code Theodoſ. *de falſa moneta.*

CHAP. IX.

The ſame Subject continued.

PAULINUS having written to the emperor Alexander, that "he was preparing to proſecute for high treaſon, a judge who had decided contrary to his edict;" the emperor anſwered, "that

"that under his reign there was no ſuch thing as "indirect high treaſon *."

Fauſtinian wrote to the ſame emperor, that as he had ſworn by the prince's life never to pardon his ſlave, he found himſelf thereby obliged to perpetuate his wrath, leſt he ſhould incur the guilt of *læſa Majeſtas*. Upon which the emperor made anſwer, "*Your fears are groundleſs* †, *and you are* "*a ſtranger to my principles.*"

It was determined by a ſenatus-conſultum (x), that whoſoever melted down any of the emperor's ſtatues, which happened to be rejected, ſhould not be deemed guilty of high treaſon. The emperors Severus and Antoninus wrote to Pontius (y); that thoſe who ſold unconſecrated ſtatues of the emperor, ſhould not be charged with high treaſon. The ſame princes wrote to Julius Caſſianus that if a perſon in flinging a ſtone ſhould by chance ſtrike one of the emperor's ſtatues, he ſhould not be liable to a proſecution for high treaſon (z). The Julian law requires this ſort of limitations; for in virtue of this law the crime of high treaſon was charged not only upon thoſe who melted down the emperor's ſtatues, but likewiſe on thoſe who committed any ſuch like action (a), which made it an arbitrary crime. When a number of crimes of *læſa Majeſtas* had been eſtabliſhed, they were obliged to diſtinguiſh the ſeveral ſorts. Hence Ulpian the civilian, after ſaying that the accuſation of *læſa Majeſtas* did not die with the criminal, adds, that this does not relate to (b) all the

(x) See the 4th law in ff. *ad leg. Jul. Maj.*

(y) See the 5th law ibid.

(z) Ibid.

(a) *Aliudve quid ſimile admiſerint.* Leg. 6 ff. ad leg. Jul. Maj.

(b) In the laſt law in ff. *ad leg. Jul. de Adulteriis.*

* *Etiam ex aliis cauſis majeſtatis crimina ceſſant meo ſæculo.* Leg. 1. eod. ad leg. Jul. Maj.

† *Alienam ſectæ meæ ſollicitudinem concepiſti.* Leg. 2. eod. ad leg. Jul. Maj.

trea-

Book XII. Chap. 10. and 11.

treaſonable acts eſtabliſhed by the Julian law, but only to that which implies an attempt againſt the empire or againſt the emperor's life.

CHAP. X.

The ſame Subject continued.

THERE was a law paſſed in England under Henry VIII. by which whoever predicted the king's death was declared guilty of high treaſon. This law was extremely vague; the terror of deſpotic power is ſo great, that it recoils upon thoſe who exerciſe it. In this king's laſt illneſs, the phyſicians would not venture to ſay he was in danger; and ſurely they acted very right (c).

(c) See Burnet's Hiſtory of the Reformation.

CHAP. XI.

Of Thoughts.

MARSYAS dreamt that he had cut Dionyſius's throat (d). Dionyſius put him to death, pretending that he would never have dreamt of ſuch a thing by night, if he had not thought of it by day. This was a moſt tyrannical action; for though it had been the ſubject of his thoughts, yet he had made no attempt * towards it. The laws do not take upon them to puniſh any other than overt acts.

(d) *Plutarch*'s life of Dionyſius.

* The thought muſt be joined with ſome ſort of action.

CHAP.

CHAP. XII.

Of indiſcreet Speeches.

NOTHING renders the crime of high treaſon more arbitrary than declaring people guilty of it for indiſcreet ſpeeches. Speech is ſo ſubject to interpretation; there is ſo great a difference between indiſcretion and malice; and frequently ſo little is there of the latter in the freedom of expreſſion, that the law can hardly ſubject people to a capital puniſhment for words, unleſs it expreſly declares what words they are *.

Words do not conſtitute an overt act; they remain only in idea. When conſidered by themſelves, they have generally no determinate ſignification; for this depends on the tone in which they are uttered. It often happens that in repeating the ſame words, they have not the ſame meaning; this depends on their connection with other things; and ſometimes more is ſignified by ſilence than by any expreſſion whatever. Since there can be nothing ſo equivocal and ambiguous as all this; how is it poſſible to convert it into a crime of high treaſon? Wherever this law is eſtabliſhed; there is an end not only of liberty, but even of its very ſhadow.

In the manifeſto of the late Czarina againſt the family of the D'Olgorucky's (°), one of theſe princes is condemned to death for having uttered

(°) In 1740.

* *Si non tale ſit delictum in quod vel ſcriptura legis deſcendit vel ad exemplum legis vindicandum eſt*, ſays Modeſtinus in the ſeventh law, *in ff. ad leg. Jul. Maj.*

ſome

BOOK XII. Chap. 12.

ſome indecent words concerning her perſon: another for having maliciouſly interpreted her imperial laws, and for having offended her ſacred perſon by diſreſpectful expreſſions.

Not that I pretend to diminiſh the juſt indignation of the public againſt thoſe who preſume to ſtain the glory of their ſovereign; what I mean is, that if deſpotic princes are willing to moderate their power, a milder chaſtiſement would be more proper on thoſe occaſions, than the charge of high treaſon, a thing always terrible even to innocence itſelf *.

Overt acts do no happen every day; they are expoſed to the eyeof the public; and a falſe charge with regard to matters of fact may be eaſily detected. Words carried into action aſſume the nature of that action. Thus a man who goes into a public market-place to incite the ſubject to revolt, incurs the guilt of high-treaſon, becauſe the words are joined to the action, and partake of its nature. It is not the words that are puniſhed, but an action in which words are employed. They do not become criminal, but when they are annexed to a criminal action: every thing is confounded, if words are conſtrued into a capital crime, inſtead of conſidering them only as a mark of that crime.

The emperors *Theodoſius*, *Arcadius*, and *Honorius*, wrote thus to Rufinus who was *præfectus prætorio*. "*Though a man ſhould happen to ſpeak amiſs* "*of our perſon, or government, we do not intend to*

* *Nec lubricum linguæ ad pœnam facile trahendum eſt.* Modeſtin. in the 7th law *in ff. ad leg. Jul. Maj.*

"*puniſh*

"*puniſh him* *: *if he has ſpoken through levity,* "*we muſt deſpiſe him*; *if through folly, we muſt* "*pity him*; *and if he wrongs us, we muſt forgive* "*him. Therefore leaving things as they are, you* "*are to inform us accordingly, that we may be able to* "*judge of words by perſons, and that we may duly* "*conſider whether we ought to puniſh or overlook* "*them.*"

CHAP. XIII.

Of Writings.

IN writings there is ſomething more permanent than in words; but when they are no way preparative to high treaſon, they cannot amount to that charge.

And yet *Auguſtus* and *Tiberius* ſubjected ſatyrical writers to the ſame puniſhment as for having violated the law of majeſty. Auguſtus (f), becauſe of ſome libels that had been written againſt perſons of the firſt quality; Tiberius, becauſe of thoſe which he ſuſpected to have been written againſt himſelf. Nothing was more fatal to Roman liberty. *Cremutius Cordus* was accuſed of having called Caſſius in his annals the laſt of the Romans (g).

(f) *Tacitus's* Annals, Book 1. This continued under the following Reigns. See the firſt law in the Code *de famoſis libellis.*

Satyrical writings are hardly known in deſpotic governments, where dejection of mind on the one hand, and ignorance on the other, afford neither abilities nor will to write. In democracies they are not hindered for the very ſame reaſon, which cauſes

(g) Tacit. Annal. Book 4.

* *Si id ex levitate proceſſerit, contemnendum eſt*; *ſi ex inſania, miſ ratione digniſſimum*; *ſi ab injuria, remittendum*, Leg. unica Cod. *Si quis Imperat. maled.*

them

Book XII. Chap. 14.

them to be prohibited in monarchies: Being generally levelled againſt men of power and authority, they flatter the malignancy of the people, who are the governing party. In monarchies they are forbidden, but rather as a ſubject of civil animadverſion, than as a capital crime. They may amuſe the general malevolence, pleaſe the malecontents, diminiſh the envy againſt public employments, give the people patience to ſuffer, and make them laugh at their ſufferings.

But no government is ſo averſe to ſatyrical writings as the ariſtocratical. There the magiſtrates are petty ſovereigns, but not great enough to deſpiſe affronts. If in a monarchy a ſatyrical ſtroke is deſigned againſt the prince, he is placed on ſuch an eminence that it does not reach him; but an ariſtocratical lord is pierced to the very heart. Hence the decemvirs, who formed an ariſtocracy, puniſhed ſatyrical writings with death [h].

(h) The law of the twelve tables.

CHAP. XIV.

Breach of Modeſty in puniſhing Crimes.

THERE are rules of modeſty obſerved by almoſt every nation in the world; now it would be very abſurd to infringe theſe rules in the puniſhment of crimes, the principal view of which ought always to be the eſtabliſhment of order.

Was it the intent of thoſe oriental nations who expoſed women to elephants trained up for an abominable kind of puniſhment, was it, I ſay, their intent to eſtabliſh one law by the breach of another?

By

By an ancient cuſtom of the Romans it was not permitted to put girls to death till they were ripe for marriage. Tiberius found out an expedient of having them debauched by the executioner, before they were brought to the place of puniſhment (i): that bloody and ſubtle tyrant deſtroyed the morals of the people to preſerve their cuſtoms.

(i) Suetonius in *Tiberio*.

When the magiſtrates of Japan cauſed women to be expoſed naked in the market-places, and obliged them to go upon all four like beaſts, modeſty was ſhocked (k): but when they wanted to compel a mother——when they wanted to force a ſon——I cannot proceed; even nature herſelf is ſtruck with horror.

(k) Collection of voyages that contributed to the eſtabliſhment of the Eaſt India Company Tom. 5. Part. 2.

CHAP. XV.

Of the infranchiſement of Slaves in order to accuſe their Maſter.

AUGUSTUS made a law that the ſlaves of thoſe who conſpired againſt his perſon, ſhould be ſold to the public, that they might depoſe againſt their maſter (l). Nothing ought to be neglected which may contribute to the diſcovery of an heinous crime; it is natural therefore that in a government where there are ſlaves they ſhould be allowed to inform; but they ought not to be admitted as witneſſes.

(l) Dio in Xiphilinus.

Vindex diſcovered the conſpiracy that had been formed in favour of Tarquin; but he was not admitted a witneſs againſt the children of Brutus. It was right to give liberty to a perſon who had rendered ſo great a ſervice to his country; but it

was

Book XII. Chap. 16. and 17.

was not given him with a view of enabling him to render this ſervice.

Hence the emperor Tacitus ordained that ſlaves ſhould not be admitted as witneſſes againſt their maſters, evèn in the caſe of high treaſon (m): a law which was not inſerted in Juſtinian's compilement.

(m) *Flavius Vopiſcus* in his life.

CHAP. XVI.

Of Calumny with regard to the Crime of high Treaſon.

TO do juſtice to the Cæſars, they were not the firſt deviſers of the horrid laws which they enacted. It is Sylla * that taught them that caluminators ought not to be puniſhed; but the abuſe was ſoon carried to ſuch exceſs as to reward them †.

CHAP. XVII.

Of the revealing of Conſpiracies.

IF thy brother, the ſon of thy mother, or thy ſon, or thy daughter, or the wife of thy boſom, or thy friend, which is as thine own ſoul, entice thee ſecretly ſaying, Let us go and ſerve other gods, *thou ſhalt ſurely kill him, thou ſhalt ſtone him* ‡. This law of

* Sylla made a law of Majeſty, which is mentioned in Cicero's orations, *pro Cluentio*, Art. 3. *in Piſonem*, Art. 21. 2d againſt Verres, Art. 5. familiar epiſtles, Book 3. Letter 11. Cæſar and Auguſtus inſerted them in the Julian laws; others made additions to them.

† *Et quò quis diſtinctior accuſator, eò magis honores aſſequebatur, ac veluti ſacroſanctus erat.* Tacit.

‡ Deuteron. chap. 13. ℣. 6.

Deutero-

Deuteronomy cannot be a civil law among moſt of the nations known to us, becauſe it would pave the way for all manner of wickedneſs. BOOK XII. Chap. 18.

No leſs ſevere is the law of ſeveral countries, which commands the ſubjects, on pain of death, to diſcloſe conſpiracies in which they are not even ſo much as concerned. When ſuch a law is eſtabliſhed in a monarchical government, it is very proper it ſhould be under ſome reſtrictions.

It ought not to be applied in its full ſeverity, but to the ſtrongeſt caſes of high treaſon. In thoſe countries it is of the utmoſt importance not to confound the different degrees of this crime. In Japan, where the laws ſubvert every idea of human reaſon, the crime of concealment is applied even to the moſt ordinary caſes.

A certain relation (n) makes mention of two young ladies, who were ſhut up for life in a box thick ſet with pointed nails, one for having had a love intrigue, and the other for not diſcloſing it.

(n) Collection of voyages that contributed to the eſtabliſhment of the Eaſt-India Company. p. 443. book 5. part 2d.

CHAP. XVIII.

How dangerous it is in Republics to be too ſevere in puniſhing the Crime of high Treaſon.

AS ſoon as a republic has compaſſed the deſtruction of thoſe who wanted to ſubvert it, there ſhould be an end of terrors, puniſhments, and even of rewards.

Great puniſhments, and conſequently great changes, cannot take place without inveſting ſome citizens with an exorbitant power. It is therefore more adviſeable in this caſe to exceed in

Book XII. Chap. 18.

lenity, than in severity; to banish but few, rather than many; and to leave them their estates, instead of making a vast number of confiscations. Under pretence of avenging the republic's cause, the avengers would establish tyranny. The business is not to destroy the rebel but the rebellion. They ought to return as quick as possible into the usual track of government, in which every one is protected by the laws, and no one injured.

The Greeks set no bounds to the vengeance they took of tyrants, or of those they suspected of tyranny; they put their children to death (o), nay sometimes five of their nearest relations *; and they proscribed an infinite number of families. By such means their republics suffered the most violent shocks; exiles or the return of the exiled were always epochs that indicated a change of the constitution.

(o) Dionys. Halicarn. Roman Antiquities Book 8.

The Romans had more sense. When Cassius was put to death for having aimed at tyranny, the question was proposed whether his children should undergo the same fate: but they were preserved. "*They*, says Dionysius Halicarnasseus (p), *who* "*wanted to change this law at the end of the* "*Marsian and civil wars, and to exclude from pub-* "*lic offices the children of those who had been pro-* "*scribed by Sylla, are very much to blame.*"

(p) Book 8. p. 547.

We find in the wars of Marius and Sylla to what excess the Romans had gradually carried their barbarity. Such scenes of cruelty it was hoped would never be revived. But under the triumvirs, they committed greater acts of oppres-

* *Tyranno occiso quinque ejus proximos cognatione magistratu necato*, Cic. de invent. lib. 2.

sion, though with some appearance of lenity; and it is provoking to see what sophisms they make use of to cover their inhumanity. Appian has given us (q) the formula of the proscriptions. One would imagine they had no other aim than the good of the republic: with such calmness do they express themselves; such advantages do they point out to the state; such expediency do they shew in the means they adopt; such security do they promise to the opulent; such tranquility to the poor; so apprehensive do they seem of endangering the lives of the citizens; so desirous of appeasing the soldiers; such felicity in fine do they presage to the commonwealth *

BOOK XII. Chap. 18.

(q) Of the civil wars, Book 4.

Rome was drenched in blood, when Lepidus triumphed over Spain: yet by an unparalleled absurdity he ordered public rejoicings in that city, upon pain of proscription †.

CHAP. XIX.

In what manner the Use of Liberty is suspended in a Republic.

IN countries where liberty is most esteemed, there are laws by which a single person is deprived of it, in order to preserve it for the whole community. Such are in England what they call *Bills of Attainder* †. These are relative to those Athenian laws

* Quod felix faustumque sit.

† *Sacris et epulis dent hunc diem: qui secus faxit, inter proscriptos esto.*

* It is not sufficient in the courts of justice of that kingdom, that the evidence be of such a nature as to satisfy the judges; there must be a legal proof; and the law requires the deposition

BOOK XII. Chap. 19.

laws by which a private perſon was condemned *, provided they were made by the unanimous ſuffrage of ſix thouſand citizens. They are relative alſo to thoſe laws which were made at Rome againſt private citizens, and were called *privileges*. † Theſe were never paſſed but in the great meetings of the people. But in what manner ſoever they were enacted, Cicero was for having them aboliſhed, becauſe the force of a law conſiſts in its being made for the whole community ‡. I muſt own, notwithſtanding, that the practice of the freeſt nation that ever exiſted, induces me to think, that there are caſes in which a veil ſhould be drawn for a while over liberty, as it was cuſtomary to cover the ſtatues of the gods.

tion of two witneſſes againſt the accuſed. No other proof will do. Now if a perſon who is preſumed guilty of high-treaſon, ſhould contrive to ſecrete the witneſſes, ſo as to render it impoſſible for him to be legally condemned, the government then may bring a bill of attainder againſt him; that is, they may enact a particular law for that ſingle fact. They proceed then in the ſame manner as in all other bills brought into parliament; it muſt paſs the two houſes, and have the king's conſent, otherwiſe it is not a bill; that is, a ſentence of the legiſlature. The perſon accuſed may plead againſt the bill by council, and the members of the houſe may ſpeak in defence of the bill.

* Legem de ſingulari aliquo ne rogato, niſi ſex millibus its viſum. *Ex Andocide de Myſteriis.* This is what they called Oſtraciſm.

† De privis hominibus latæ, *Cicero* de Leg. lib. 3.

‡ Scitum eſt juſſum in omnes, *Cicero* ibid.

CHAP.

CHAP. XX.

Of Laws favourable to the Liberty of the Subject in a Republic.

IN popular governments it often happens that accuſations are carried on in public, and every man is allowed to accuſe whomſoever he pleaſes. This rendered it neceſſary to eſtabliſh proper laws, in order to protect the innocence of the ſubject. At Athens, if an accuſer had not the fifth part of the votes on his ſide, he was obliged to pay a fine of a thouſand drachms. Æſchines, who accuſed Cteſiphon, was condemned to pay this fine (r). At Rome, a falſe accuſer was branded with infamy ‖ by marking the letter *K* on his forehead. Guards were alſo appointed to watch the accuſer, in order to prevent his corrupting either the judges, or the witneſſes (s).

BOOK XII. Chap. 20. and 21.

(r) See *Philoſtratus*, book 1. Lives of the Sophiſts, life of Æſchines. See likewiſe *Plutarch* and *Photius*.

I have already taken notice of that Athenian and Roman law, by which the party accuſed was allowed to withdraw before judgment was pronounced

(s) Plutarch, in a treatiſe entitled, *How a perſon may reap advantage from his enemies.*

CHAP. XXI.

Of the Cruelty of Laws in reſpect to Debtors in a Republic.

GREAT is the ſuperiority which one fellow-ſubject has already over another, by lending him money, which the latter borrows in order to ſpend, and, of courſe, has no longer in his poſſeſſion. What muſt be the conſequence if the laws

‖ By the Remmian law.

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of a republic make a farther addition to this ſervitude and ſubjection?

At Athens and Rome * it was at firſt permitted to ſell ſuch debtors as were inſolvent. Solon redreſſed this abuſe at Athens (t); by ordaining, that no man's body ſhould anſwer for his civil debts. But the decemvirs † did not reform the ſame cuſtom at Rome; and though they had Solon's regulation before their eyes, yet they did not chuſe to follow it. This is not the only paſſage of the law of the twelve tables, in which the decemvirs ſhow their deſign of checking the ſpirit of democracy.

(t) *Plutarch*, life of Solon.

Often did thoſe cruel laws againſt debtors throw the Roman republic into danger. A man all covered with wounds made his eſcape from his creditor's houſe, and appeared in the forum (u) The people were moved with this ſpectacle, and other citizens whom their creditors durſt no longer confine, broke looſe from their dungeons. They had promiſes made them, which were all broke. The people upon this having withdrawn to the Sacred Mount, obtained not an abrogation of thoſe laws, but a magiſtrate to defend them. Thus they quitted a ſtate of anarchy, but were ſoon in danger of falling under tyranny. Manlius to render himſelf popular was going to ſet thoſe citizens at liberty, who by their inhuman creditors (x) had been reduced to ſlavery. Manlius's deſigns were prevented, but without remedying the evil. Particular laws facilitated to debtors the means of

(u) *Dionyſ. Halicarn.* Rom. An. book 6.

(x) *Plutarch*, life of Furius Camillus.

* A great many ſold their children to pay their debts. *Plutarch*, life of Solon.

† It appears from hiſtory that this cuſtom was eſtabliſhed among the Romans before the law of the twelve tables. *Livy* I. dec. book 2.

paying

paying (y); and in the year of Rome 428 the consuls propoſed a law *, which deprived creditors of the power of confining their debtors in their own houſes †. An uſurer, by name *Papirius*, attempted to corrupt the chaſtity of a young man named *Publius*, whom he kept in irons. *Sextus*'s crime gave to Rome its political liberty; that of *Papirius* gave it alſo the civil.

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(y) See what follows in the 24th chapter of the book of laws as relative to the uſe of money.

Such was the fate of this city, that new crimes confirmed the liberty, which thoſe of a more ancient date had procured it. *Appius*'s attempt upon Virginia, flung the people again into that horror againſt tyrants, with which the misfortune of *Lucretia* had firſt inſpired them. Thirty-ſeven years after (z) the crime of the infamous *Papirius*, an action of the like criminal nature ‡ was the cauſe of the people's retiring to the *Janiculum* (a), and of giving new vigor to the law made for the ſafety of debtors.

(z) The year of Rome 465.

(a) See a fragment. of *Dionyſ. Halicarn.* in the extract of virtuesand vices, Livy's epitome, book 2. & Freinſhemius book 2.

Since that time creditors were oftener proſecuted by debtors for having violated the laws againſt uſury, than the latter were ſued for refuſing to pay them.

* One hundred and twenty years after the law of the twelve tables, *eo anno plebi Romanæ, velut aliud initium libertatis factum eſt, quod nexi defierunt.* Livy lib. 8.

† *Bona debitoris, non corpus obnoxium eſſet.* Ibid.

‡ That of *Plautius* who made an attempt upon the body of *Pennius*; *Valerius Maximus* book 6. art. 9. Theſe two events ought not to be confounded; they are neither the ſame perſons, nor the ſame times.

CHAP. XXII.

Of things that ſtrike at Liberty in Monarchies.

Book XII. Chap. 22.

LIBERTY often has been weakened in monarchies by a thing of the leaſt uſe in the world to the prince: this is the naming of commiſſioners to try a private perſon.

The prince himſelf derives ſo very little advantage from thoſe commiſſioners, that it is not worth while to change for their ſake the common courſe of things. He is morally ſure that he has more of the ſpirit of probity and juſtice than his commiſſioners, who think themſelves ſufficiently juſtified by his nomination and orders, by a vague intereſt of ſtate, and even by their very apprehenſions.

Upon the arraigning of a peer under Henry VIII. it was cuſtomary to try him by a committee of the houſe of lords: by which means he put to death as many peers as he pleaſed.

CHAP. XXIII.

Of Spies in Monarchies.

SHOULD I be aſked whether there is any neceſſity for ſpies in monarchies; my anſwer would be that the uſual practice of good princes is not to employ them. When a man obeys the laws, he has diſcharged his duty to his prince. He ought at leaſt to have his own houſe for an aſylum, and the reſt of his conduct ſhould be exempt from inquiry. The trade of a ſpy might perhaps be tolerable, were it practiſed by honeſt men;

men; but the neceſſary infamy of the perſon is ſufficient to make us judge of the infamy of the thing. A prince ought to act towards his ſubjects with candor, frankneſs, and confidence. He that has ſo much diſquiet, ſuſpicion, and fear, is an actor embarraſſed in playing his part. When he finds that the laws are generally obſerved and reſpected, he may judge himſelf ſafe. The behaviour of the public anſwers for that of every individual. Let him not be afraid: he cannot imagine how natural it is for his people to love him. And how ſhould they do otherwiſe than love him? ſince he is the ſource of almoſt all bounties and favours; puniſhments being generally charged to the account of the laws. He never ſhews himſelf to his people but with a ſerene countenance; they have even a ſhare of his glory, and they are protected by his power. A proof of his being beloved is that his ſubjects have a confidence in him; what the miniſter refuſes, they imagine the prince would have granted: even under public calamities they do not accuſe his perſon; they are apt to complain of his being miſinformed, or beſet by corrupt men: *Did the prince but know*, ſay the people; theſe words are a kind of invocation, and a proof of the confidence they have in his perſon.

CHAP. XXIV.

Of Anonymous Letters.

THE Tartars are obliged to put their names to their arrows, that the arm may be known which ſhoots them. When Philip of Macedon

Book XII. Chap 24.

was wounded at the siege of a certain town, those words were found on the javelin, *After has given this mortal wound to Philip* (b). If they who accuse a person did it merely to serve the public, they would not carry their complaint to the prince, who may be easily prejudiced, but to the magistrates, who have rules that are formidable only to calumniators. But if they are unwilling to leave the laws open between them and the accused, it is a presumption they have reason to be afraid of them; and the least punishment they ought to suffer, is not to be credited. No notice therefore should ever be taken of those letters, except in cases that admit not of the delays of the ordinary course of justice, and in which the prince's welfare is concerned. Then it may be imagined that the accuser has made an effort, which has untied his tongue. But in other cases one ought to say with the emperor Constantius: "*We cannot* "*suspect a person who has wanted an accuser, while* "*he did not want an enemy* (c)."

(b) Plutarch's Morals, *Comparison of some Roman and Greek Histories*, tom. 2. p. 487.

(c) Leg. VI. Cod. Theod. *de Famis Libellis.*

CHAP. XXV.

Of the manner of governing in Monarchies.

THE royal authority is a spring that ought to move with the greatest freedom and ease. The Chinese boast of one of their emperors, who governed, they say, like the heavens, that is, by his example.

There are some cases in which a sovereign ought to exert the full extent of his power; and others in which he should reduce it within narrower limits. The sublimity of administration consists in know-

ing

ing the proper degree of power, which ſhould be exerted on different occaſions. BOOK XII. Chap. 26.

The whole felicity of monarchies conſiſts in the opinion which the ſubjects entertain of the lenity of the government. A weak miniſter is ever ready to remind us of our ſlavery. But granting even that we are ſlaves, he ſhould endeavour to conceal our miſery from us. All he can ſay or write is that the prince is uneaſy, that he is ſurpriſed, and that he will redreſs all grievances. There is a certain eaſe in commanding; the prince ought only to encourage, and let the laws menace *.

CHAP. XXVI.

That in a Monarchy, the Prince ought to be of eaſy Acceſs.

THE utility of this maxim will appear from the inconveniency attending the contrary practice. "*The Czar Peter* I. SAYS THE SIEUR "PERRY (d), *has publiſhed a new edict, by which* "*he forbids any of his ſubjects to offer him a peti-* "*tion, till after having preſented it to two of his* "*officers. In caſe of refuſal of juſtice they may pre-* "*ſent him a third, but upon pain of death, if they* "*are in the wrong. After this no one ever preſumed* "*to offer a petition to the Czar.*"

(d) State of Ruſſia, p. 173. Paris edition, 1717.

* Nerva, *ſays Tacitus*, encreaſed the eaſe of government.

CHAP.

CHAP. XXVII.

Of the Manners of a Monarch.

Book XII. Chap. 27.

THE manners of a prince contribute as much as the laws themſelves to liberty; like theſe he may transform men into brutes, and brutes into men. If he prefers free and generous ſpirits, he will have ſubjects: if he likes baſe daſtardly ſouls, he will have ſlaves. Would he know the great art of ruling; let him call honor and virtue to attend his perſon; and let him encourage perſonal merit. He may even ſometimes caſt an eye on talents and abilities. Let him not be afraid of thoſe rivals who are called men of merit; he is their equal when once he loves them. Let him gain the hearts of his people, without ſubduing their ſpirits. Let him render himſelf popular; he ought to be pleaſed with the affections of the loweſt of his ſubjects, for they too are men. The common people require ſo very little condeſcenſion, that it is fit they ſhould be humoured; the infinite diſtance between the ſovereign and them will ſurely prevent them from giving him any uneaſineſs. Let him be exorable to ſupplication, and reſolute againſt demands; let him be ſenſible in fine, that his people have his refuſals, while his courtiers enjoy his favors.

CHAP. XXVIII.

Of the Regard which Monarchs owe to their Subjects.

PRINCES ought to be extremely circumſpect with regard to raillery. It pleaſes with moderation,

deration, becauſe it is an introduction to familiarity; but a ſatirical raillery is leſs excuſable in them than in the meaneſt of their ſubjects, for it is they alone that give a mortal wound.

Much leſs ſhould they offer a public affront to any of their ſubjects; kings were inſtituted to pardon and to puniſh, but never to inſult.

When they affront their ſubjects, their treatment is more cruel than that of the Turk or the Muſcovite. The inſults of theſe are a humiliation, not a diſgrace; but both muſt follow from the inſolent behavjour of monarchs.

Such is the prejudice of the eaſtern nations, that they look upon an affront from the prince, as the effect of paternal goodneſs; and ſuch on the contrary is our way of thinking, that beſides the cruel vexation of being affronted, we deſpair of ever being able to wipe off the diſgrace.

Princes ought to be overjoyed to have ſubjects to whom honor is dearer than life, an incitement to fidelity as well as to courage.

They ſhould remember the misfortunes that have happened to ſovereigns for inſulting their ſubjects, the revenge of *Chærea*, of the eunuch *Narſes*, of count *Julian*, and in fine of the dutcheſs of *Montpenſier*, who being enraged againſt Henry III. for having publiſhed ſome of her private failings, tormented him during his whole life.

CHAP.

CHAP. XXIX.

Of the civil Laws *proper for mixing some portion of Liberty in a despotic Government.*

Book XII. Chap. 29.

THOUGH despotic governments are of their own nature every where the same; yet from circumstances, from a religious opinion, from prejudice, from received examples, from a particular turn of mind, from manners or morals, it is possible they may admit of a considerable difference.

It is useful that some particular notions should be established in those governments: thus in China the prince is considered as the father of his people; and at the commencement of the empire of the Arabs, the prince was their preacher *.

It is proper there should be some sacred book to serve for a rule, as the Koran among the Arabs, the books of Zoroaster among the Persians, the Vedam among the Indians, and the classic Books among the Chinese. The religious code supplies the civil, and fixes the extent of arbitrary sway.

It is not at all amiss that in dubious cases the judges should consult the ministers of religion (e). Thus in Turky the Cadis consult the Mollachs. But if it is a capital crime, it may be proper for the particular judge, if such there be, to take the governor's advice, to the end that the civil and ecclesiastic power may be tempered also by the political authority.

(e) History of the Tartars, 3d part p. 277. in the remarks.

* The Caliphs.

CHAP.

CHAP. XXX.

The same Subject continued.

NOTHING but the very excess and rage of despotic power ordained that the father's disgrace should drag after it that of his wife and children. They are wretched enough already without being criminals: besides, the prince ought to leave suppliants or mediators between himself and the accused, to assuage his wrath, or to inform his justice. BOOK XII. Chap. 30.

It is an excellent custom of the Maldavians (f), that when a lord is disgraced, he goes every day to pay his court to the king till he is taken again into favor: his presence disarms the prince's indignation. (f) See Francis Pirard.

In some despotic governments * they have a notion that it is trespassing against the respect due to their prince, to speak to him in favour of a person in disgrace. These princes seem to use all their endeavours to deprive themselves of the virtue of clemency.

Arcadius and *Honorius*, by a law (g) on which we have already descanted (h), positively declare that they will shew no favour to those, who shall presume to petition them in behalf of the guilty (i). This was a very bad law indeed, since it is bad even under a despotic government. (g) The fifth law in the cod. *ad leg. Jul. Maj.* (h) In the 8th chapter of this book. (i) Frederic copied this law in the constitutions of Naples, book 1.

The custom of Persia, which permits every man that pleases, to leave the kingdom, is excellent;

* As at present in Persia, according to Sir John Chardin; this custom is very ancient. They put Cavades, says Procopius, into the castle of oblivion; there is a law which forbids any one to speak of those who are shut up, or even to mention their name.

and

BOOK XII. Chap. 30.

and though the contrary practice derives its origin from deſpotic power, which has ever conſidered the ſubjects as ſlaves *, and thoſe who quit the country as fugitives, yet the Perſian practice is uſeful even to a deſpotic government, becauſe the apprehenſion of people's withdrawing for debt reſtrains or moderates the oppreſſions of baſhaws and extortioners.

* In monarchies there is generally a law which forbids thoſe who are inveſted with public employments to go out of the kingdom, without the prince's leave. This law ought to be eſtabliſhed alſo in republics. But in thoſe that have particular inſtitutions the prohibition ought to be general, in order to prevent the introduction of foreign manners.

BOOK XIII.

Of the Relation which the levying of Taxes and the Greatneſs of the public Revenues have to Liberty.

CHAP. I.

Of the public Revenues.

THE *public revenues* are a portion that each ſubject gives of his property, in order to ſecure, or enjoy the remainder.

To fix theſe revenues in a proper manner, regard ſhould be had both to the neceſſities of the ſtate and to thoſe of the ſubject. The real wants of the people ought never to give way to the imaginary wants of the ſtate.

Imaginary wants are thoſe which flow from the paſſions, and the weakneſs of the governors, from the vain conceit of ſome extraordinary project, from the inordinate deſire of glory, and from a certain impotence of mind incapable of withſtanding the impulſe of fancy. Often have miniſters of a reſtleſs diſpoſition imagined, that the wants of their own mean and ignoble ſouls were thoſe of the ſtate.

Nothing requires more wiſdom and prudence than the regulation of that portion of which the ſubject is deprived, and that which he is ſuffered to retain.

The public revenues ſhould not be meaſured by the people's abilities to give, but by what they ought to give; and if they are meaſured by their abilities to give, it ſhould be conſidered what they are able to give for a conſtancy.

CHAP. II.

That it is bad Reaſoning to ſay that the Greatneſs of Taxes is good in its own Nature.

THERE have been inſtances in particular monarchies, of petty ſtates, exempt from taxes, that have been as miſerable as the circumjacent places which groaned under the weight of exactions. The chief reaſon of this is; that the petty ſtate can hardly have any ſuch thing as induſtry, arts, or manufactures, becauſe of its being ſubject to a thouſand reſtraints from the great ſtate by which it is environed. The great ſtate is bleſſed with induſtry, manufactures, and arts; and eſtabliſhes laws by which thoſe ſeveral advantages are procured. The petty ſtate becomes therefore neceſſarily poor, let it pay never ſo few taxes.

And yet ſome have concluded from the poverty of thoſe petty ſtates, that in order to render the people induſtrious, they ſhould be loaded with taxes. But it would be a juſter inference, that they ought to pay no taxes at all. None live here but wretches who retire from the neighbouring parts to avoid working; wretches, who diſheartened by labour, make their whole felicity conſiſt in idleneſs.

The

The effect of wealth in a country is to inſpire every heart with ambition: that of poverty is to give birth to deſpair. The former is excited by labour, the latter is ſoothed by indolence.

Nature is juſt to all mankind, and repays them for their induſtry: ſhe renders them induſtrious by annexing rewards in proportion to their labour. But if an arbitrary prince ſhould attempt to deprive people of nature's bounty, they would fall into a diſreliſh of induſtry; and then indolence and inaction muſt be their only happineſs.

CHAP. III.

Of Taxes in Countries where Part of the People are Villains *or Bondmen.*

THE ſtate of villainage is ſometimes eſtabliſhed after a conqueſt. In that caſe, the bondman or villain that tills the land, ought to have a kind of partnerſhip with his maſter. Nothing but a communication of loſs or profit can reconcile thoſe who are doomed to labour, to ſuch as are bleſſed with a ſtate of affluence.

CHAP. IV.

Of a Republic in the like Caſe.

WHEN a republic has reduced a nation to the drudgery of cultivating her lands, ſhe ought never to ſuffer the free ſubject to have a power of increaſing the tribute of the bondman. This was not permitted at Sparta. Thoſe brave people thought the Helotes (*) would be more induſtrious in cultivating their lands, and knowing that their

(*) Plutarch.

ſervitude was not to increaſe; they imagined likewiſe that the maſters would be better citizens, when they deſired no more than what they were accuſtomed to enjoy.

CHAP. V.

Of a Monarchy in the like Caſe.

WHEN the nobles of a monarchical ſtate cauſe the lands to be cultivated for their own uſe by a conquered people, they ought never to have a power of increaſing the ſervice or tribute*. Beſides, it is right the prince ſhould be ſatisfied with his own demeſne, and the military ſervice. But if he wants to raiſe taxes on the vaſſals of his nobility, the lords of the ſeveral diſtricts ought to be anſwerable for the tax†, and be obliged to pay it for the vaſſals, by whom they may be afterwards reimburſed. If this rule be not followed, the lord and the collectors of the public taxes will harraſs the poor vaſſal by turns, till he periſhes with miſery, or flies into the woods.

CHAP. VI.

Of a deſpotic Government in the like Caſe.

THE foregoing rule is ſtill more indiſpenſibly neceſſary in a deſpotic government. The lord who is every moment liable to be ſtripped of his lands and his vaſſals, is not ſo eager to preſerve them.

* This is what induced Charlemagne to make his excellent inſtitution upon this head. See the 5th book of the *Capitularies*, art. 303.

† This is the practice in Germany.

When

When Peter I. thought proper to follow the cuſtom of Germany, and to demand his taxes in money, he made a very prudent regulation, which is ſtill followed in Ruſſia. The gentleman levies the tax on the peaſant, and pays it to the Czar. If the number of peaſants diminiſhes, he pays all the ſame; if it increaſes, he pays no more: ſo that it is his intereſt not to worry or oppreſs his vaſſals.

CHAP. VII.

Of Taxes *in Countries where Villainage is not eſtabliſhed.*

WHEN the inhabitants of a ſtate are all free ſubjects, and each man enjoys his property with as much right as the prince his ſovereignty, taxes may then be laid either on perſons, on lands, on merchandizes, on two of theſe, or on all three together.

In the taxing of perſons, it would be an unjuſt proportion to conform exactly to that of property. At Athens (b) the people were divided into four claſſes. Thoſe who drew five hundred meaſures of liquid or dry fruit from their eſtates, paid a * talent to the public; thoſe who drew three hundred meaſures, paid half a talent; thoſe who had two hundred meaſures, paid ten minæ; thoſe of the fourth claſs paid nothing at all. The tax was fair, though it was not proportionable: if it did not follow the meaſure of people's property, it followed that of their wants. It was judged that every man had an equal ſhare of what was *neceſſary for nature*; that whatſoever was *neceſſary for nature*,

(b) Pollux, book 8th, chap. 10. art. 130.

* Or 60 minæ.

Book XIII. Chap. 7.

ought not to be taxed; that to this ſucceeded the uſeful, which ought to be taxed, but leſs than the ſuperfluous; and that the largeneſs of the taxes on what was ſuperfluous, prevented ſuperfluity.

In the taxing of lands, it is cuſtomary to make liſts or regiſters, in which the different claſſes of eſtates are ranged. But it is very difficult to know theſe differences, and ſtill more ſo, to find people that are not intereſted in miſtaking them. Here therefore are two ſorts of injuſtice, that of the man and that of the thing. But if in general the tax be not exorbitant, and the people continue to have plenty of neceſſaries, theſe particular acts of injuſtice will do no harm. On the contrary, if the people are permitted to enjoy only juſt what is neceſſary for ſubſiſtence, the leaſt diſproportion will be of the greateſt conſequence.

If ſome ſubjects do not pay enough, the miſchief is not ſo great; their convenience and eaſe turn always to the public advantage: if ſome private people pay too much, their ruin redounds to the public detriment. If the government proportions its fortune to that of individuals, the eaſe and conveniency of the latter will ſoon make its fortune riſe. The whole depends upon a critical moment: ſhall the ſtate begin with impoveriſhing the ſubjects to enrich itſelf? Or had it better wait to be enriched by its ſubjects? Is it more adviſeable for it to have the former, or the latter advantage? Which ſhall it chuſe; to begin, or to end with opulence?

The duties felt leaſt by the people are thoſe on merchandize, becauſe they are not demanded of them in form. They may be ſo prudently managed, that the

the people themſelves ſhall hardly know they pay them. For this purpoſe it is of the utmoſt conſequence, that the perſon who ſells the merchandize ſhould pay the duty. He is very ſenſible that he does not pay it for himſelf; and the conſumer, who pays it in the main, confounds it with the price. Some authors have obſerved that Nero had aboliſhed the duty of the five and twentieth part ariſing from the ſale of ſlaves *; and yet he had only ordained that it ſhould be paid by the ſeller inſtead of the purchaſer; this regulation, which left the impoſt intire, ſeemed nevertheleſs to ſuppreſs it.

There are two ſtates in Europe where the impoſts are very heavy upon liquors; in one the brewer alone pays the duty, in the other it is levied indiſcriminately upon all the conſumers: in the firſt no body feels the rigor of the impoſt, in the ſecond it is looked upon as a grievance. In the former the ſubject is ſenſible only of the liberty he has of not paying, in the latter he feels only the neceſſity that compels him to pay.

Farther, the obliging the conſumers to pay, requires a perpetual rummaging and ſearching into their houſes. Now nothing is more contrary than this to liberty; and thoſe who eſtabliſh theſe ſorts of duties have not ſurely been ſo happy, as to hit upon the beſt method of collecting the revenue.

* *Vectigal quintæ & viceſimæ venalium mancipiorum remiſſum ſpecie magis, quam vi, quia cum venditor pendere juberetur, in partem pretii emptoribus accreſcebat.* Tacit. Annal. lib. 13.

CHAP. VIII.

In what Manner the Deception is preſerved.

BOOK XIII. Chap. 8.

IN order to make the purchaſer confound the price of the commodity with the impoſt, there muſt be ſome proportion between the impoſt and the value of the commodity; for which reaſon there ought not to be an exceſſive duty upon merchandizes of little value. There are countries in which the duty exceeds ſeventeen or eighteen times the value of the commodity. In this caſe the prince removes the diſguiſe: his ſubjects plainly ſee they are dealt with in an unreaſonable manner; which renders them moſt exquiſitely ſenſible of their ſervile condition.

Beſides, the prince to be able to levy a duty ſo diſproportioned to the value of the commodity, muſt be himſelf the vender, and the people muſt not have it in their power to purchaſe it elſewhere: a practice ſubject to a thouſand inconveniencies.

Smuggling being in this caſe extremely lucrative, the natural and moſt reaſonable penalty, namely, the confiſcation of the merchandize, becomes incapable of putting a ſtop to it; eſpecially as this very merchandize is intrinſically of an inconſiderable value. Recourſe muſt therefore be had to extravagant puniſhments, ſuch as thoſe inflicted for capital crimes. All proportion then of penalties is at an end. Perſons that cannot really be conſidered as vicious, are puniſhed like the moſt infamous criminals; which of all things in the world, is the moſt contrary to the ſpirit of a moderate government.

Again, in proportion as people are tempted to cheat the farmer of the revenues, the more the latter

is

is enriched, and the former impoverished. To put a stop to smuggling, the farmer must be invested with extraordinary means of oppressing, and then the country is ruined.

CHAP. IX.

Of a bad kind of Impost.

WE shall here, by the way, take notice of an impost laid in particular countries on the different articles of civil contracts. As these are things subject to very nice disquisitions, a vast deal of knowledge is necessary to make any tolerable defence against the farmer of the revenues, who interprets, in that case, the regulations of the prince, and exercises an arbitrary power over people's fortunes. Experience has demonstrated that a duty on the paper on which the deeds are drawn, would be of far greater service.

CHAP. X.

That the Greatness of Taxes depends on the Nature of the Government.

TAXES ought to be very light in despotic governments; otherwise who would be at the trouble of tilling the land? Besides, how is it possible to pay heavy duties in a government that makes no manner of return to the different contributions of the subject?

The exorbitant power of the prince, and the extreme depression of the people, require that there should not be even a possibility of the least mistake between them. The taxes ought to be so easy to

to collect, and so clearly settled, as to leave no opportunity for the collectors to increase or diminish them. A portion of the fruits of the earth, a capitation, a duty of so much per cent. on merchandizes, are the only taxes suitable to that government.

Merchants in despotic countries ought to have a personal safeguard, to which all due respect should be paid. Without this they would be too weak to dispute with the custom-house officers.

CHAP. XI.

Of Confiscations.

WITH respect to confiscations, there is one thing very particular, that contrary to the general custom, they are more severe in Europe than in Asia. In Europe not only the merchandizes, but even sometimes the ships and carriages are confiscated; which is never practised in Asia. This is because in Europe the merchant can have recourse to magistrates, who are able to shelter him from oppression; in Asia the magistrates themselves would be the greatest oppressors. What remedy could a merchant have against a bashaw, who was determined to confiscate his goods?

The prince therefore checks his own power, finding himself under a necessity of acting with some kind of lenity. In Turky they raise only a single duty for the importation of goods, and afterwards the whole country is open to the merchant. Smuggling is not attended with confiscation, or increase of duty. In China (c) they never look into the baggage of those who are not merchants. Defraud-

(c) Father du Halde Tom. 2. p. 37.

frauding the cuſtoms in the territory of the Mogul is not puniſhed with confiſcation, but with doubling the duty. The princes of (d) Tartary who reſide in towns, impoſe ſcarce any duty at all on the goods that paſs through their country. In Japan, it is true, to cheat the cuſtoms is a capital crime; but this is becauſe they have particular reaſons for prohibiting all communication with foreigners; hence the fraud * is rather a contravention of the laws made for the ſecurity of the government, than of thoſe of commerce.

(d) Hiſtory of the Tartars, part. 3d. p. 290.

CHAP. XII.

Relation between the weight of Taxes and Liberty.

IT is a *general rule*, that taxes may be heavier in proportion to the liberty of the ſubject, and that there is a neceſſity for reducing them in proportion to the increaſe of ſlavery. This has always been and always will be the caſe. It is a rule derived from nature that never varies. We find it in all parts, in England, in Holland, and in every ſtate where liberty gradually declines, till we come to Turky. Swiſſerland ſeems to be an exception to this rule, becauſe they pay no taxes; but the particular reaſon for that exemption is well known, and even confirms what I have advanced. In thoſe barren mountains proviſions are ſo dear,

* Being willing to trade with foreigners without having any communication with them, they have pitched upon two nations for that purpoſe, the Dutch for the commerce of Europe, and the Chineſe for that of Aſia; they confine the factors and ſailors in a kind of priſon, and lay ſuch a reſtraint upon them as tires their patience,

and

BOOK XIII. Chap. 12.

and the country is ſo populous, that a Swiſs pays four times more to nature, than a Turk does to the Sultan.

A conquering people, ſuch as were formerly the Athenians and the Romans, may rid themſelves of all taxes, as they reign over vanquiſhed nations. Then indeed they do not pay in proportion to their liberty, becauſe in this reſpect they are no longer a people, but a monarch.

But the general rule ſtill holds good. In moderate governments there is an indemnity for the weight of the taxes, which is liberty. In deſpotic countries * there is an equivalent for liberty, which is the lightneſs of the taxes.

In ſome monarchies in Europe, there are † particular provinces, which from the very nature of their civil government are in a more flouriſhing condition than the reſt. It is pretended that theſe provinces are not ſufficiently taxed, becauſe through the goodneſs of their government they are able to be taxed higher: hence the miniſters ſeem conſtantly to aim at depriving them of this very government, from whence a diffuſive bleſſing is derived, which redounds even to the prince's advantage.

* In Ruſſia the taxes are but ſmall; they have been increaſed ſince the deſpotic power of the prince is exerciſed with more moderation. See the Hiſtory of the Tartars, 2d part.

† The *Pais d'etats*, where the ſtates of the province aſſemble to deliberate on public affairs.

CHAP.

CHAP. XIII.

In what Government Taxes are capable of Increaſe.

TAXES may be increaſed in moſt republics, becauſe the citizen, who thinks he is paying himſelf, chearfully ſubmits to them, and moreover is generally able to bear their weight, from the nature of the government. BOOK XIII. Chap. 13, and 14.

In a monarchy taxes may be increaſed, becauſe the moderation of the government is capable of procuring opulence: it is a recompence, as it were, granted to the prince for the reſpect he ſhews to the laws. In deſpotic governments they cannot be increaſed, becauſe there can be no increaſe of the extremity of ſlavery.

CHAP. XIV.

That the Nature of the Taxes is relative to the Government.

A Capitation is more natural to ſlavery; a duty on merchandizes is more natural to liberty, by reaſon it has not ſo direct a relation to the perſon.

It is natural in a deſpotic government for the prince not to give money to his ſoldiers, or to thoſe belonging to his court; but to diſtribute lands amongſt them, and of courſe, that there ſhould be very few taxes. But if the prince gives money, the moſt natural tax he can raiſe is a capitation, which can never be conſiderable. For as it is impoſſible to make different claſſes of the contributors, becauſe of the abuſes that might ariſe from

Book XIII. Chap. 15.

thence, conſidering the injuſtice and violence of the government, they are under an abſolute neceſſity of regulating themſelves by the rate of what even the pooreſt and moſt wretched are able to contribute.

The natural tax of moderate governments, is the duty laid on merchandizes. As this is really paid by the conſumer, though advanced by the merchant, it is a loan which the latter has already made to the former. Hence the merchant muſt be conſidered on the one ſide as the general debtor of the ſtate, and on the other as the creditor of every individual. He advances to the ſtate the duty, which the conſumer will ſome time or other refund; and he has paid for the conſumer the duty which he has advanced for the merchandize. It is therefore obvious, that in proportion to the moderation of the government, to the prevalence of the ſpirit of liberty, and to the ſecurity of private fortunes, a merchant has it in his power to advance money to the ſtate, and to pay conſiderable duties for individuals. In England a merchant lends really to the government fifty or ſixty pounds ſterling for every tun of wine he imports. Where is the merchant that would dare do any ſuch thing in a country like Turky? And were he ſo preſumptuous, how could he do it with a crazy or ſhattered fortune?

CHAP. XV.

Abuſe of Liberty.

TO theſe great advantages of liberty it is owing that liberty itſelf has been abuſed. Becauſe a moderate government has been productive of

of admirable effects, this moderation has been laid aside: becauſe great taxes have been raiſed, they wanted to carry them to exceſs: and ungrateful to the hand of liberty of whom they received this preſent, they addreſſed themſelves to ſlavery who never grants the leaſt favor.

Liberty produces exceſſive taxes; the effect of exceſſive taxes is ſlavery; and ſlavery produces a diminution of tribute.

Moſt of the edicts of the eaſtern monarchs are to exempt every year ſome province of their empire from paying tribute *. The manifeſtations of their will are favors. But in Europe the edicts of princes are diſagreeable even before they are ſeen, becauſe they always make mention of their own wants, but not a word of ours.

From an unpardonable indolence in the miniſters of thoſe countries, owing to the nature of the government, and frequently to the climate, the people derive this advantage, that they are not inceſſantly plagued with new demands. The public expence does not increaſe, becauſe the miniſters do not form new projects; and if ſome by chance are formed, they are ſuch as are ſoon executed. The governors of the ſtate do not perpetually torment the people; for they do not perpetually torment themſelves. But it is impoſſible there ſhould be any fixed rule in our finances, ſince we always know that we ſhall have ſomething or other to execute, without ever knowing what it is.

It is no longer cuſtomary with us to give the appellation of a great miniſter to a wiſe diſpenſer of

* This is the practice of the Emperors of China.

the public revenues; but to a perſon of dexterity and cunning, who is clever at finding out what we call the ways and means.

CHAP. XVI.

Of the Conqueſts of the Mahometans.

IT was this exceſs of taxes * that occaſioned the prodigious facility with which the Mahometans carried on their conqueſts. Inſtead of a continual ſeries of extortions deviſed by the ſubtle avarice of the Greek emperors, the people were ſubjected to a ſimple tribute, which was paid and collected with eaſe. Thus they were far happier in obeying a barbarous nation, than a corrupt government, in which they ſuffered every inconvenience of loſt liberty, with all the horror of preſent ſlavery.

CHAP. XVII.

Of the Augmentation of Troops.

A New diſtemper has ſpread itſelf over Europe, infecting our princes, and inducing them to keep up an exorbitant number of troops. It has its redoublings, and of neceſſity becomes contagious. For as ſoon as one prince augments his forces, the reſt of courſe do the ſame; ſo that nothing is gained thereby but the public ruin. Each monarch keeps as many armies on foot, as if his people were in danger of being

* See in hiſtory the greatneſs, the oddity, and even the folly of thoſe taxes. Anaſtaſius invented a tax for breathing, *at quiſque pro hauſtu aeris penderet.*

exter-

exterminated; and they give the name of peace * to this general effort of all againſt all. Thus is Europe ruined to ſuch a degree, that were private people to be in the ſame ſituation as the three moſt opulent powers of this part of the globe, they would not have neceſſary ſubſiſtence. We are poor with the riches and commerce of the whole world; and ſoon, by thus augmenting our troops, we ſhall be all ſoldiers, and be reduced to the very ſame ſituation as the Tartars †. BOOK XIII. Chap. 17.

Great princes, not ſatisfied with hiring or buying troops of petty ſtates, make it their buſineſs on all ſides to pay ſubſidies for alliances, that is, generally to throw away their money.

The conſequence of ſuch a ſituation is the perpetual augmentation of taxes; and the miſchief which prevents all future remedy, is that they reckon no more upon their revenues, but in waging war engage their whole capital. It is no unuſual thing to ſee governments mortgage their funds even in time of peace, and to imploy what they call extraordinary means to ruin themſelves; means ſo extraordinary indeed, that ſuch are hardly thought on by the moſt extravagant young ſpendthrift.

* True it is that this ſtate of effort is the chief ſupport of the balance, becauſe it checks the great powers.

† All that is wanting for this is, to improve the new invention of the militia eſtabliſhed in moſt parts of Europe, and carry it to the ſame exceſs as they do the regular troops.

CHAP. XVIII.

Of an Exemption from Taxes.

BOOK XIII. Chap. 18.

THE maxim of the great eaſtern empires of exempting ſuch provinces, as have very much ſuffered, from taxes, ought to be extended to monarchical ſtates. There are ſome indeed where this practice is eſtabliſhed; yet the country is more oppreſſed than if no ſuch rule took place; becauſe as the prince levies ſtill neither more nor leſs, the ſtate becomes bound for the whole. In order to eaſe a village that pays badly, they load another that pays better; the former is not relieved, and the latter is ruined. The people grow deſperate between the neceſſity of paying, for fear of exactions; and the danger of paying for fear of new burdens.

A well regulated government ought to ſet aſide, for the firſt article of its expence, a determinate ſum to anſwer contingent caſes. It is with the public as with individuals, who are ruined when they live up exactly to their income.

With regard to an obligation for the whole amongſt the inhabitants of the ſame village, ſome pretend *, that it is but reaſonable, becauſe there is a poſſibility of a fraudulent combination on their ſide: but was it ever heard that upon mere ſuppoſition we are to eſtabliſh a thing in itſelf unjuſt and ruinous to the ſtate?

* See *a treatiſe on the Roman Finances* chap. 2. Printed at Paris by Briaſſon, 1740.

CHAP.

CHAP. XIX.

Which is moſt ſuitable to the Prince and to the People, the farming the revenues, or managing them by commiſſion?

THE managing of the revenues by commiſſion is like the conduct of a good father of a family, who collects his own rents himſelf with œconomy and order. Book XIII. Chap. 19.

By this management of the revenues the prince is at liberty to preſs or to retard the levy of the taxes, either according to his own wants, or to thoſe of his people. By this he ſaves to the ſtate the immenſe profits of the farmers, who impoveriſh it a thouſand ways. By this he prevents the people from being mortified with the ſight of ſudden fortunes. By this the public money paſſes through few hands, goes directly to the treaſury, and conſequently makes a quicker return to the people. By this the prince avoids an infinite number of bad laws extorted from him by the importunate avarice of the farmers, who pretend to offer a preſent advantage for regulations pernicious to poſterity.

As the moneyed man is always the moſt powerful, the farmer renders himſelf arbitrary even over the prince himſelf; he is not the legiſlator, but he obliges the legiſlator to give laws.

I acknowledge that it is ſometimes of uſe to farm out a new duty, for there is an art in preventing frauds, which motives of intereſt ſuggeſt to the farmers, but commiſſioners never think on: now the manner of levying it being once eſtabliſhed

BOOK XIII. Chap. 19.

by the farmer, it may afterwards be ſafely entruſted to a commiſſion. In England the management of the Exciſe and of the Poſt-office was borrowed from that of the farmers of the revenue.

In republics, the revenues of the ſtate are generally managed by commiſſion. The contrary practice was a great defect in the Roman government *. In deſpotic governments, the people are infinitely happier where this management is eſtabliſhed; witneſs Perſia and China (d). The unhappieſt of all are thoſe where the prince farms out his ſea-ports and trading cities. The hiſtory of monarchies abounds with miſchiefs done by the farmers of the revenue.

(d) See Sir John Chardin's travels through Perſia. Tom. 6.

Incenſed at the oppreſſive extortions of the publicans, Nero formed a magnanimous but impracticable ſcheme of aboliſhing all kinds of impoſts. He did not think of managing the revenues by commiſſioners: but he made four edicts; that the laws enacted againſt publicans, which had hitherto been kept ſecret, ſhould be promulged; that they ſhould exact no claims for above a year backward; that there ſhould be a prætor eſtabliſhed to determine their pretenſions without any formality; and that the merchants ſhould pay no duty for their veſſels. Theſe were the haicyon days of that emperor.

* Cæſar was obliged to remove the publicans from the province of Aſia and to eſtabliſh there another kind of regulation, as we learn from Dio; and Tacitus informs us that Macedonia and Achaia, provinces left by Auguſtus to the people of Rome, and conſequently governed purſuant to the ancient plan, obtained to be of the number of thoſe which the emperor governed by his officers.

CHAP.

CHAP. XX.

Of the Farmers of the Revenues.

WHEN the lucrative profeſſion of a farmer of the revenue becomes likewiſe a poſt of honor, the ſtate is ruined. It may do well enough in deſpotic governments, where this employment is oftentimes exerciſed by the governors themſelves. But it is by no means proper in a republic; ſince a cuſtom of the like nature deſtroyed that of Rome. Nor is it better in monarchies; nothing being more oppoſite to the ſpirit of this government. All the other orders of the ſtate are diſſatisfied; honor loſes its whole value; the gradual and natural means of diſtinction are no longer reſpected; and the very principle of the government is ſubverted. BOOK XIII. Chap. 20.

It is true indeed that ſcandalous fortunes were raiſed in former times; but this was one of the calamities of the fifty years war. Theſe riches were then conſidered as ridiculous; now we admire them.

Every profeſſion has its particular lot. That of the tax-gatherers is wealth; and wealth is its own reward. Glory and honor fall to the ſhare of that nobility, who are ſenſible of no other happineſs. Reſpect and eſteem are for thoſe miniſters and magiſtrates, whoſe whole life is a continued ſeries of labour, and who watch day and night over the welfare of the empire.

BOOK XIV.

Of Laws as relative to the Nature of the Climate.

CHAP. I.

General Idea.

BOOK XIV. Chap. 1. and 2.

IF it be true that the temper of the mind, and the paſſions of the heart are extremely different in different climates, the laws ought to be relative both to the variety of thoſe paſſions, and to the variety of thoſe tempers.

CHAP. II.

Of the Difference of Men in different Climates.

A Cold air * conſtringes the extremities of the external fibres of the body; this increaſes their elaſticity, and favors the return of the blood from the extreme parts to the heart. It contracts † thoſe very fibres; conſequently it increaſes alſo their force. On the contrary a warm air relaxes and lengthens the extremes of the fibres; of courſe it diminiſhes their force and elaſticity.

People are therefore more vigorous in cold climates. Here the action of the heart and the re-

* This appears even in the countenance; in cold weather people look thinner.

† We know it ſhortens iron.

action

action of the extremities of the fibres are better performed, the temperature of the humours is greater, the blood moves freer towards the heart, and reciprocally the heart has more power. This ſuperiority of ſtrength muſt produce various effects; for inſtance, a greater boldneſs, that is, more courage; a greater ſenſe of ſuperiority, that is, leſs deſire of revenge; a greater opinion of ſecurity, that is more frankneſs, leſs ſuſpicion, policy, and cunning. In ſhort this muſt be productive of very different tempers. Put a man into a cloſe warm place, and for the reaſons above given, he will feel a great faintneſs. If under this circumſtance you propoſe a bold enterprize to him, I believe you will find him very little diſpoſed towards it: his preſent weakneſs will throw him into a deſpondency; he will be afraid of every thing, being in a ſtate of total incapacity. The inhabitants of warm countries are, like old men, timorous; the people in cold countries are, like young men, brave. If we reflect on the late * wars, which are more recent in our memory, and in which we can better diſtinguiſh ſome particular effects that eſcape us at a greater diſtance of time; we ſhall find that the northen people tranſplanted into ſouthern regions †, did not perform ſuch exploits as their countrymen, who, fighting in their own climate, poſſeſſed their full vigor and courage.

This ſtrength of the fibres in northern nations is the cauſe that the coarſer juices are extracted from their aliments. From hence two things re-

* Thoſe for the ſucceſſion to the Spaniſh Monarchy.

† For inſtance in Spain.

Book XIV. Chap. 2.

result: one, that the parts of the chyle or lymph are more proper by reaſon of their large ſurface, to be applied to, and to nouriſh, the fibres: the other, that they are leſs proper, from their coarſeneſs, to give a certain ſubtilty to the nervous juice. Thoſe people have therefore large bodies and but little vivacity.

The nerves that terminate from all parts in the cutis, form each a nervous bundle; generally ſpeaking, the whole nerve is not moved, but a very minute part. In warm climates where the cutis is relaxed, the ends of the nerves are expanded and laid open to the weakeſt action of the ſmalleſt objects. In cold countries the cutis is conſtringed and the papillæ compreſſed; the miliary glands are in ſome meaſure paralytic; and the ſenſation does not reach the brain, but when it is very ſtrong and proceeds from the whole nerve at once. Now imagination, taſte, ſenſibility, and vivacity, depend on an infinite number of ſmall ſenſations.

I have obſerved the outermoſt part of a ſheep's tongue, where to the naked eye it ſeems covered with papillæ. On theſe papillæ, I have diſcerned through a microſcope, ſmall hairs or a kind of down; between the papillæ were pyramids ſhaped towards the ends like pincers. Very likely theſe pyramids are the principal organs of taſte.

I cauſed the half of this tongue to be frozen, and obſerving it with the naked eye I found the papillæ conſiderably diminiſhed: even ſome rows of them were ſunk into their ſheath. The outermoſt part I examined with the microſcope, and perceived no pyramids. In proportion as the froſt

frost went off, the papillæ seemed to the naked eye to rise, and with the microscope the miliary glands began to appear. BOOK XIV. Chap. 2.

This observation confirms what I have been saying, that in cold countries the nervous glands are less expanded: they sink deeper into their sheaths, or they are sheltered from the action of external objects: consequently they have not such lively sensations.

In cold countries, they have very little sensibility for pleasure; in temperate countries, they have more; in warm countries, their sensibility is exquisite. As climates are distinguished by degrees of latitude, we might distinguish them also in some measure, by those of sensibility. I have been at the opera in England and in Italy; where I have seen the same pieces and the same performers: and yet the same music produces such different effects on the two nations; one is so cold and phlegmatic, and the other so lively and enraptured, that it seems almost inconceivable.

It is the same with regard to pain; which is excited by the laceration of some fibre of the body. The author of nature has made it an established rule that this pain should be more acute in proportion as the laceration is greater: now it is evident that the large bodies and coarse fibres of the people of the north, are less capable of laceration than the delicate fibres of the inhabitants of warm countries; consequently the soul is there less sensible of pain. You must flay a Muscovite alive to make him feel.

From this delicacy of organs peculiar to warm climates, it follows that the soul is most sensibly moved

moved by whatever relates to the union of the two ſexes: here every thing leads to this object.

In northern climates ſcarce has the animal part of love a power of making itſelf felt. In temperate climates, love attended by a thouſand appendages, endeavours to pleaſe by things that have at firſt the appearance, though not the reality of this paſſion. In warmer climates it is liked for its own ſake, it is the only cauſe of happineſs, it is life itſelf.

In ſouthern countries a machine of a delicate frame, but ſtrong ſenſibility, reſigns itſelf either to a love which riſes and is inceſſantly laid in a ſeraglio; or to a paſſion which leaves women in a greater independence, and is conſequently expoſed to a thouſand inquietudes. In northern regions a machine robuſt and heavy, finds a pleaſure in whatever is apt to throw the ſpirits into motion, ſuch as hunting, travelling, war, and wine. If we travel towards the north, we meet with people who have few vices, many virtues, and a great ſhare of frankneſs and ſincerity. If we draw near the ſouth, we fancy ourſelves intirely removed from the verge of morality: here the ſtrongeſt paſſions are productive of all manner of crimes, each man endeavouring, let the means be what they will, to indulge his inordinate deſires. In temperate climates we find the inhabitants inconſtant in their manners, as well as in their vices and virtues: the climate has not a quality determinate enough to fix them.

The heat of the climate may be ſo exceſſive as to deprive the body of all vigor and ſtrength.

Then the faintneſs is communicated to the mind; there is no curioſity, no enterprize, no generoſity of ſentiment; the inclinations are all paſſive; indolence conſtitutes the utmoſt happineſs; ſcarcely any puniſhment is ſo ſevere as mental employment; and ſlavery is more ſupportable than the force and vigor of mind neceſſary for human conduct.

CHAP. III.

Contradiction in the Tempers of ſome ſouthern Nations.

THE Indians * are naturally a puſillanimous people; even the children † of Europeans born in India loſe the courage peculiar to their own climate. But how ſhall we reconcile this with their cuſtoms, and penances ſo full of barbarity? the men voluntarily undergo the greateſt hardſhips; and the women burn themſelves: here we find a very odd compound of fortitude and weakneſs.

Nature having framed thoſe people of a texture ſo weak as to fill them with timidity, has formed them at the ſame-time of an imagination ſo lively, that every object makes the ſtrongeſt impreſſion upon them. That delicacy of organs which renders them apprehenſive of death, contributes likewiſe to make them dread a thouſand things more than death: the very ſame ſenſibility induces them to fly, and dare, all dangers.

* One hundred European ſoldiers, ſays Tavernier, would without any great difficulty beat a thouſand Indian ſoldiers.

† Even the Perſians, who ſettle in the Indies, contract in the third generation the indolence and cowardice of the Indians. See Bernier, on the Mogul, Tom. 1. p. 182.

As

As a good education is more neceſſary to children than to ſuch as are arrived to a maturity of underſtanding, ſo the inhabitants of thoſe countries have much greater need than the European nations of a wiſe legiſlator. The greater their ſenſibility, the more it behoves them to receive proper impreſſions, to imbibe no prejudices, and to let themſelves be directed by reaſon.

At the time of the Romans the inhabitants of the north of Europe were deſtitute of arts, education, and almoſt of laws: and yet the good ſenſe annexed to the groſs fibres of thoſe climates enabled them to make an admirable ſtand againſt the power of Rome, till the memorable period in which they quitted their woods to ſubvert that great empire.

CHAP. IV.

Cauſe of the Immutability of Religion, Manners, Cuſtoms, and Laws, in the Eaſtern Countries.

IF to that delicacy of organs which renders the eaſtern nations ſo ſuſceptible of every impreſſion, you add likewiſe a ſort of indolence of mind, naturally connected with that of the body, by means of which they grow incapable of any exertion or effort; it is eaſy to comprehend, that when once the ſoul has received an impreſſion ſhe cannot change it. This is the reaſon that the laws, manners *, and cuſtoms, even thoſe which

* We find by a fragment of Nicolaus Damaſcenus, collected by Conſtantine Porphyrog. that it was an ancient cuſtom in the Eaſt to ſend to ſtrangle a governor who had given any diſpleaſure; it was in the time of the Medes.

ſeem

seem quite indifferent, such as their mode of dress, are the same to this very day in eastern countries as they were a thousand years ago.

CHAP. V.

That those are bad Legislators who favour the Vices of the Climate, and good Legislators who oppose those Vices.

THE Indians believe that repose and non-existence are the foundation of all things, and the end in which they terminate. Hence they consider entire inaction as the most perfect of all states, and the object of their desires. To the supreme Being they give * the title of immoveable. The inhabitants of Siam believe that their utmost happiness (a) consists in not being obliged to animate a machine, or to give motion to a body.

(a) *La Loubiere.* Relation of Siam p. 446.

In those countries where the excess of heat enervates and exhausts the body, rest is so delicious, and motion so painful, that this system of metaphysics seems natural; and † Foe, the legislator of the Indies, was directed by his own sensations, when he placed mankind in a state extremely passive: but his doctrine arising from the laziness of the climate, favoured it also in its turn;

* Panamanack: See Kircher.

† Foe endeavoured to reduce the heart to a mere vacuum; "we have eyes and ears, but perfection consists in neither seeing nor hearing; a mouth, hands, &c. but perfection requires that these members should be inactive." This is taken from the dialogue of a Chinese philosopher, quoted by father Du Halde, Tom. 3.

which

which has been the ſource of an infinite deal of miſchief.

The legiſlators of China were more rational, when conſidering men not in the peaceful ſtate which they are to enjoy hereafter, but in the ſituation proper for diſcharging the ſeveral duties of life, they made their religion, philoſophy, and laws, all practical. The more the phyſical cauſes incline mankind to inaction, the more the moral cauſes ſhould eſtrange them from it.

CHAP. VI.

Of Agriculture in warm Climates.

AGriculture is the principal labour of man. The more the climate inclines him to ſhun this labour, the more the religion and laws of the country ought to excite him to it. Thus the Indian laws, which give the lands to the prince, and deſtroy the ſpirit of property among the ſubjects, increaſe the bad effects of the climate, that is, their natural indolence.

CHAP. VII.

Of Monkery.

THE very ſame miſchiefs reſult from monkery: it had its riſe in the warm countries of the Eaſt, where they are leſs inclined to action than to ſpeculation.

In Aſia the number of derviſes or monks ſeems to increaſe together with the warmth of the climate. The Indies, where the heat is exceſſive, are

are full of them; and the ſame difference is found in Europe. Book XIV. Chap. 8.

In order to ſurmount the lazineſs of the climate, the laws ought to endeavour to remove all means of ſubſiſting without labour: but in the ſouthern parts of Europe they act quite the reverſe; to thoſe who want to live in a ſtate of indolence, they afford retreats the moſt proper for a ſpeculative life, and endow them with immenſe revenues. Theſe men, who live in the midſt of a plenty which they know not how to enjoy, are in the right to give their ſuperfluities away to the common people. The poor are bereft of property; and theſe men indemnify them by ſupporting them in idleneſs, ſo as to make them even grow fond of their miſery.

CHAP. VIII.

An excellent Cuſtom of China.

THE hiſtorical relations (b) of China mention a ceremony * of opening the grounds, which the emperor performs every year. The deſign of this public and ſolemn act is to excite † the people to tillage.

(b) Father DuHalde, Hiſtory of China, tom. 2. pag. 72.

Farther, the emperor is every year informed of the huſbandman, who has diſtinguiſhed himſelf moſt in his profeſſion; and he makes him a Mandarin of the eighth order.

* Several of the kings of India do the ſame; relation of the kingdom of Siam by La Loubiere, p. 69.

† *Venty*, the third emperor of the third dynaſty, tilled the lands himſelf, and made the empreſs and his wives employ their time in the ſilk-works in his palace. Hiſtory of China.

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Book XIV. Chap. 9. and 10.

Among the ancient Perſians (c) the kings quitted their grandeur and pomp on the eighth day of the month called *Chorrem-ruz* to eat with the huſbandmen. Theſe inſtitutions were admirably well calculated for the encouragement of agriculture.

(c) Hyde, religion of the Perſians.

CHAP. IX.

Means of encouraging Induſtry.

WE ſhall ſhew in the nineteenth book, that lazy nations are generally proud. Now the effect might well be turned againſt the cauſe, and lazineſs be deſtroyed by pride. In the ſouth of Europe, where people have ſuch a high notion of the point of honour, it would be right to give prizes to huſbandmen, who had excelled in agriculture; or to artiſts who had made the greateſt improvements in their ſeveral profeſſions. This practice has ſucceeded in our days in Ireland, where it has eſtabliſhed one of the moſt conſiderable linen manufactures in Europe.

CHAP. X.

Of the Laws relative to the Sobriety of the People.

IN warm countries, the aqueous part of the blood looſes itſelf greatly by perſpiration *; it muſt therefore be ſupplied by a like liquid. Water

* Monſieur Bernier travelling from Lahor to Cachemir, wrote thus: *My body is a ſieve; ſcarce have I ſwallowed a pint of water but I ſee it tranſude like dew out of all my limbs, even to my finger's ends. I drink ten pints a day, and it does me no manner of harm.* Bernier's travels, Tom. 2. p. 261.

is there of admirable uſe; ſtrong liquors would congeal the globules * of blood that remain after the tranſuding of the aqueous humour. BOOK XIV. Chap. 10.

In cold countries the aqueous part of the blood is very little evacuated by perſpiration. They may therefore make uſe of ſpirituous liquors, without which the blood would congeal. They are full of humours; conſequently ſtrong liquors, which give a motion to the blood, are proper for thoſe countries.

The law of Mahomet, which prohibits the drinking of wine, is therefore fitted to the climate of Arabia: and, indeed, before Mahomet's time, water was the common drink of the Arabs. The law (d) which forbad the Carthaginians to drink wine, was alſo a law of the climate; and, indeed, the climate of thoſe two countries is pretty near the ſame.

(d) Plato, Book 2. of laws; Ariſtotle of the care of domeſtic affairs; Euſebius's Evangelical preparation, Book 12. c. 17.

Such a law would be improper for cold countries, where the climate ſeems to force them to a kind of national intemperance, very different from perſonal ebriety. Drunkenneſs predominates throughout the world, in proportion to the coldneſs and humidity of the climate. Go from the Equator to the north pole, and you will find this vice increaſing together with the degree of latitude. Go from the equator again to the ſouth pole, and you will find the ſame vice travelling ſouth †, exactly in the ſame proportion.

It is very natural that where wine is contrary to the climate, and conſequently to health, the

* In the blood there are red globules, fibrous parts, white globules, and water in which the whole ſwims.

† This is ſeen in the Hottentots, and the inhabitants of the moſt ſouthern part of Chili.

BOOK XIV. Chap. 11.

excefs of it ſhould be more ſeverely puniſhed, than in countries where intoxication produces very few bad effects to the perſon, fewer to the ſociety, and where it does not make people frantic and wild, but only ſtupid and heavy. Hence thoſe laws * which inflicted a double puniſhment for crimes committed in drunkenneſs, were applicable only to a perſonal, and not to a national ebriety. A German drinks through cuſtom, and a Spaniard by choice.

In warm countries the relaxing of the fibres produces a great evacuation of the liquids, but the ſolid parts are leſs tranſpired. The fibres which act but faintly, and have very little elaſticity, are not much impaired; and a ſmall quantity of nutritious juice is ſufficient to repair them; for which reaſon, they eat very little.

It is the variety of wants in different climates, that firſt occaſioned a difference in the manner of living, and this gave riſe to a variety of laws. Where people are very communicative, there muſt be particular laws; and others where there is but little communication.

CHAP. XI.

Of the Laws relative to the Diſtempers of the Climate.

(c) Book 2. HERODOTUS (c) informs us, that the Jewiſh laws concering the leproſy, were borrowed from the practice of the Ægyptians. And, indeed, the ſame diſtemper required the ſame remedies.

* As Pittacus did, according to Ariſtotle, polit. lib. 1. c. 3. He lived in a climate where drunkenneſs is not a national vice.

The Greeks and the primitive Romans were ſtrangers to theſe laws, as well as to the diſeaſe. The climate of Ægypt and Paleſtine rendered them neceſſary; and the facility with which this diſeaſe is ſpread, is ſufficient to make us ſenſible of the wiſdom and ſagacity of thoſe laws.

Even we ourſelves have felt the effects of them. The Croiſades had brought the leproſy amongſt us; but the wiſe regulations made at that time, hindered it from infecting the maſs of the people.

We find by the law of the (f) Lombards, that this diſeaſe was ſpread in Italy before the croiſades, and merited the attention of the legiſlature. Rotharis ordained that a leper ſhould be expelled from his houſe, baniſhed to a particular place, and rendered incapable of diſpoſing of his property; becauſe from the very moment he had been turned out of his houſe, he was reckoned dead in the eye of the law. In order to prevent all communication with lepers, they were rendered incapable of civil acts.

(f) Book 2. tit. 1. §. 3. & tit. 18. §. 1.

I am apt to think that this diſeaſe was brought into Italy by the conqueſts of the Greek emperors, in whoſe armies there might be ſome ſoldiers from Paleſtine or Ægypt. Be that as it may, the progreſs of it was ſtopt till the time of the Croiſades.

It is related that Pompey's ſoldiers returning from Syria brought a diſtemper home with them not unlike the leproſy. We have no account of any regulation made at that time; but it is highly probable that ſome ſuch ſtep was taken, ſince the diſtemper was checked till the time of the Lombards.

Book XIV. Chap. 11.

It is now two centuries ſince a diſeaſe, unknown to our anceſtors, was firſt tranſplanted from the new world to ours, and came to attack human nature even in the very ſource of life and pleaſure. Moſt of the principal families in the ſouth of Europe were ſeen to periſh by a diſtemper, that was grown too common to be ignominious, and was conſidered in no other light, than in that of its being fatal. It was the thirſt of gold that propagated this diſeaſe; the Europeans went continually to America, and always brought back a new leven of it.

Reaſons drawn from religion ſeemed to require that this puniſhment of guilt ſhould be permitted to continue; but the infection had reached the boſom of matrimony, and given the vicious taint even to guiltleſs infants.

As it is the buſineſs of legiſlators to watch over the health of the citizens, it would have been a wiſe part in them to have ſtopped this communication by laws made on the plan of thoſe of *Moſes*.

The plague is a diſeaſe whoſe infectious progreſs is much more rapid. Ægypt is its principal ſeat, from whence it ſpreads over the whole globe. Moſt countries in Europe have made exceeding good regulations to prevent this infection, and in our times an admirable method has been contrived to ſtop it; this is by forming a line of troops round the infected country, which cuts off all manner of communication.

The Turks (g), who have no ſuch regulations, ſee the Chriſtians eſcape this infection in the ſame town, and none but themſelves periſh; they buy the cloaths of the infected, wear them, and proceed

(g) Ricaut on the Ottoman empire, p. 284.

ceed in their old way, as if nothing had happened. The doctrine of a rigid fate, which directs their whole conduct, renders the magiſtrate a quiet ſpectator; he thinks that every thing comes from the hand of God, and that man has nothing more to do than to ſubmit.

CHAP. XII.

Of the Laws againſt Suicides.

WE do not find in hiſtory that the Romans ever killed themſelves without a cauſe: but the Engliſh are apt to commit ſuicide moſt unaccountably; they deſtroy themſelves even in the boſom of happineſs. This action among the Romans was the effect of education; being connected with their principles and cuſtoms: among the Engliſh it is the conſequence of a * diſtemper; being connected with the phyſical ſtate of the machine, and independent of every other cauſe.

In all probability it is a defect of the filtration of the nervous juice: the machine whoſe motive faculties are often unexerted, is weary of itſelf; the ſoul feels no pain, but a certain uneaſineſs in exiſting. Pain is a local ſenſation, which leads us to the deſire of ſeeing an end of it; the burthen of life, which prompts us to the deſire of ceaſing to exiſt, is an evil, confined to no particular part.

It is evident that the civil laws of ſome countries may have reaſons for branding ſuicide with infamy:

* It may be complicated with the ſcurvy, which, in ſome countries eſpecially, renders a man whimſical and unſupportable to himſelf. See Pirard's voyages part 2. chap. 21.

Book XIV. Chap. 13.

but in England it cannot be puniſhed without puniſhing the effects of madneſs.

CHAP. XIII.

Effects ariſing from the Climate of England.

IN a nation ſo diſtempered by the climate as to have a diſreliſh of every thing, nay even of life, it is plain that the government moſt ſuitable to the inhabitants, is that in which they cannot lay their uneaſineſs to any ſingle perſon's charge, and in which, being under the direction rather of the laws than of the prince, it is impoſſible for them to change the government without ſubverting the laws themſelves.

And if this nation has likewiſe derived from the climate a certain impatience of temper, which renders them incapable of bearing the ſame train of things for any long continuance; it is obvious that the government above-mentioned is the fitteſt for them.

This impatience of temper is not very conſiderable of itſelf; but it may become ſo when joined with courage.

It is quite a different thing from levity, which makes people undertake or drop a project without cauſe; it borders more upon obſtinacy, becauſe it proceeds from ſo lively a ſenſe of miſery, that it is not weakened even by the habit of ſuffering.

This temper in a free nation is extremely proper for diſconcerting the projects of tyranny *, which

* Here I take this word for the deſign of ſubverting the eſtabliſhed power, and eſpecially that of democracy; this is the ſigni-

which is always ſlow and feeble in its commencements, as in the end it is active and lively; which at firſt only ſtretches out a hand to aſſiſt, and exerts afterwards a multitude of arms to oppreſs.

Slavery is ever preceded by ſleep. But a people who find no reſt in any ſituation, who continually explore every part, and feel nothing but pain, can hardly be lulled to ſleep.

Politics are a ſmooth file, which cuts gradually, and attains its end by a ſlow progreſſion. Now the people of whom we have been ſpeaking, are incapable of bearing the delays, the details, and the coolneſs of negociations: In theſe they are more unlikely to ſucceed than any other nation; hence they are apt to loſe by treaties what they obtain by their arms.

CHAP. XIV.

Other Effects of the Climate.

OUR anceſtors, the ancient Germans, lived under a climate, where the paſſions were extremely calm. Their laws decided only in ſuch caſes where the injury was viſible to the eye, and went no farther. And as they judged of the outrages done to men from the greatneſs of the wound, they acted with no other delicacy in reſpect to the injuries done to women. The law of (h) the Alemans on this ſubject is very extraordinary. If a perſon uncovers a woman's head, he pays a fine of fifty ſous; if he uncovers her leg up to the knee, he pays the ſame; and double

(h) Chap. 58. § 1. and 2.

ſignification in which it was underſtood by the Greeks and Romans.

Book XIV. Chap. 14.

from the knee upwards. One would think that the law meaſured the inſults offered to women, as we meaſure a figure in geometry; it did not puniſh the crime of the imagination, but that of the eye. But upon the migration of a German nation into Spain, the climate ſoon found a neceſſity for different laws. The law of the Viſigoths inhibited the ſurgeons to bleed a free woman, except either her father, mother, brother, ſon, or uncle was preſent. As the imagination of the people grew warm, ſo did that of the legiſlators; the law ſuſpected every thing when the people were become ſuſpicious.

Theſe laws had therefore a particular regard for the two ſexes. But in their puniſhments they ſeem rather to humour the revengeful temper of private perſons, than to adminiſter public juſtice. Thus in moſt caſes they reduced both the criminals to be ſlaves to the offended relations or to the injured huſband; a free-born woman [i] who had yielded to the embraces of a married man, was delivered up to his wife to diſpoſe of her as ſhe pleaſed. They obliged the ſlaves [k] if they found their maſter's wife in adultery, to bind her, and carry her to her huſband; they even permitted her children [l] to be her accuſers, and her ſlaves to be tortured in order to convict her. Thus their laws were far better adapted to refine, even to exceſs, a certain point of honor, than to form a good civil adminiſtration. We muſt not therefore be ſurprized if count Julian was of opinion, that an affront of that kind ought to be expiated by the ruin of his king and country: we muſt not be ſurprized if the Moors, with ſuch a conformity

[i] Law of the Viſigoths, book 3. tit. 4. §. 9.

[k] Ibid. book 3. tit. 4. §. 6.

[l] Ibid book 3. tit. 4. §. 13.

formity of manners, found it so easy to settle and to maintain themselves in Spain, and to retard the fall of their empire.

CHAP. XV.

Of the different Confidence which the Laws have in the People, according to the Difference of Climates.

THE people of Japan are of so stubborn and perverse a temper, that neither their legislators nor magistrates can put any confidence in them: they set nothing before their eyes but judgments, menaces, and chastisements; every step they take is subject to the inquisition of the civil magistrate. Those laws which out of five heads of families establish one as a magistrate over the other four; those laws which punish a family or a whole ward for a single crime; those laws in fine which find no body innocent where one may happen to be guilty, are made with a design to implant in the people a mutual distrust, and to make every man the inspector, witness, and judge of his neighbour's conduct.

On the contrary, the people of India, are mild (m), tender, and compassionate. Hence their legislators repose a great confidence in them. They have established (n) very few punishments; these are not severe, nor are they rigorously executed. They have subjected nephews to their uncles, and orphans to their guardians, as in other countries they are subjected to their fathers; they have regulated the succession by the acknowledged merit of the successor. They seem to think that every individual

(m) See Bernier, Tom. 2. p. 140.

(n) See in the 14th collection of the *edifying letters*, p. 403. the principal laws or customs of the inhabitants of the peninsula on this side the Ganges.

Book XIV. Chap. 15.

vidual ought to place an intire confidence in the good nature of his fellow ſubjects.

They infranchiſe their ſlaves without difficulty, they marry them, they treat them as their children*: happy climate which gives birth to innocence, and produces a lenity in the laws!

* I had once thought that the lenity of ſlavery in India had made Diodorus ſay, that there was neither maſter nor ſlave in that country; but Diodorus has attributed to the whole continent of India, what, according to Strabo, lib. 15. belonged only to a particular nation.

BOOK XV.

In what manner the Laws of civil Slavery are relative to the Nature of the Climate.

CHAP. I.

Of civil Slavery.

Book XV. Chap. I.

SLAVERY, properly ſo called, is the eſtabliſhment of a right, which gives to one man ſuch a power over another, as renders him abſolute maſter of his life and fortune. The ſtate of ſlavery is in its own nature bad. It is neither uſeful to the maſter nor to the ſlave; not to the ſlave, becauſe he can do nothing through a motive of virtue; nor to the maſter, becauſe by having an unlimited authority over his ſlaves, he inſenſibly accuſtoms himſelf to the want of all moral virtues, and from thence becomes fierce, haſty, ſevere, choleric, voluptuous, and cruel.

In deſpotic countries, where they are already in a ſtate of political ſervitude, civil ſlavery is more tolerable than in other governments. Every one ought to be ſatisfied in thoſe countries with neceſſaries and life. Hence the condition of a ſlave is hardly more burdenſome than that of a ſubject.

But in a monarchical government, where it is of the utmoſt importance that human nature ſhould not be debaſed, nor diſpirited, there ought to

to be no ſlavery. In democracies, where they are all upon an equality; and in ariſtocracies, where the laws ought to uſe their utmoſt endeavour to procure as great an equality as the nature of the government will permit, ſlavery is contrary to the ſpirit of the conſtitution: it only contributes to give a power and luxury to the citizens which they ought not to have.

CHAP. II.

Origin of the Right of Slavery among the Roman Civilians.

ONE would never have imagined that ſlavery ſhould owe its birth to pity, and that this ſhould have been excited three different ways (a).

(a) Juſtinian's Inſtitutes, book 1.

The law of nations, to prevent priſoners from being put to death, has allowed them to be made ſlaves. The civil law of the Romans empowered debtors, who were ſubject to be ill uſed by their creditors, to ſell themſelves. And the law of nature requires, that children, whom a father in the ſtate of ſervitude is no longer able to maintain, ſhould be reduced to the ſame ſtate as the father.

Theſe reaſons of the civilians are all falſe. It is falſe that killing in war is lawful, unleſs in a caſe of abſolute neceſſity: but when a man has made another his ſlave, he cannot be ſaid to have been under a neceſſity of taking away his life, ſince he actually did not take it away. War gives no other right over priſoners than to diſable them from doing any farther harm, by ſecuring their perſons. All nations * concur in deteſting the murdering of priſoners in cold blood.

* Excepting a few Canibals.

Neither

Neither is it true, that a freeman can ſell himſelf. Sale implies a price; now when a perſon ſells himſelf, his whole ſubſtance immediately devolves to his maſter; the maſter therefore in that caſe gives nothing, and the ſlave receives nothing. You will ſay he has a *peculium*. But this peculium goes along with his perſon. If it is not lawful for a man to kill himſelf, becauſe he robs his country of his perſon, for the ſame reaſon he is not allowed to barter his freedom. The freedom of every citizen conſtitutes a part of the public liberty; and in a democratical ſtate is even a part of the ſovereignty. To ſell one's freedom * is ſo repugnant to all reaſon, as can ſcarce be ſuppoſed in any man. If liberty may be rated with reſpect to the buyer, it is beyond all price to the ſeller. The civil law, which authorizes a diviſion of goods among men, cannot be thought to rank among ſuch goods, a part of the men who were to make this diviſion. The ſame law annuls all iniquitous contracts; ſurely then it affords redreſs in a contract where the grievance is moſt enormous.

The third way is birth; which falls with the two former; for if a man could not ſell himſelf, much leſs could he ſell an unborn infant. If a priſoner of war is not to be reduced to ſlavery, much leſs are his children.

The lawfuleſs of putting a malefactor to death, ariſes from this circumſtance; the law, by which he is puniſhed, was made for his ſecurity. A murderer, for inſtance, has enjoyed the benefit of the very law which condemns him; it has been a con-

* I mean ſlavery in a ſtrict ſenſe, as formerly among the Romans, and at preſent in our colonies,

tinual

tinual protection to him; he cannot therefore object againſt it. But it is not ſo with the ſlave. The law of ſlavery can never be beneficial to him; it is in all caſes againſt him, without ever being for his advantage; and therefore this law is contrary to the fundamental principle of all ſocieties.

If it be pretended, that it has been beneficial to him; as his maſter has provided for his ſubſiſtence; ſlavery, at this rate, ſhould be limited to thoſe who are incapable of earning their livelihood. But who will take up with ſuch ſlaves? As to infants, nature, who has ſupplied their mothers with milk, had provided for their ſuſtenance; and the remainder of their childhood approaches ſo near the age in which they are moſt capable of being of ſervice, that he who ſupports them cannot be ſaid to give them an equivalent, which can entitle him to be their maſter.

Nor is ſlavery leſs oppoſite to the civil law than to that of nature. What civil law can reſtrain a ſlave from running away, ſince he is not a member of ſociety, and conſequently has no intereſt in any civil inſtitutions? He can be retained only by a family law, that is, by the maſter's authority.

CHAP. III.

Another Origin of the Right of Slavery.

I WOULD as ſoon ſay, that the right of ſlavery proceeds from the contempt of one nation for another, founded on a difference in cuſtoms.

Lopez

Lopez (b) *de Gamar* relates, "*that the Spaniards found near St. Martha, ſeveral baſkets full of crabs, ſnails, graſhoppers, and locuſts, which proved to be the ordinary proviſion of the natives. This the conquerors turned to a heavy charge againſt the conquered.*" The author owns that this, with their ſmoaking and trimming their beards in a different manner, gave riſe to the law by which the Americans became ſlaves to the Spaniards.

(b) Bibliotheca Ang. tom. 13. p. 2. art. 3.

Knowledge humanizes mankind, and reaſon inclines to mildneſs; but prejudices eradicate every tender diſpoſition.

CHAP. IV.

Another Origin of the Right of Slavery.

I Would as ſoon ſay that religion gives its profeſſors a right to enſlave thoſe who diſcent from it, in order to render its propagation more eaſy.

This was the notion that encouraged the ravagers of America in their iniquity (c). Under the influence of this idea, they founded their right of enſlaving ſo many nations: for theſe robbers, who would abſolutely be both robbers and Chriſtians, were ſuperlatively devout.

(c) See Hiſt. of the conqueſt of Mexico, by Soliſ, and that of Peru, by Garcilaſſo de la Vega.

Lewis XIII. (d) was extremely uneaſy at a law, by which all the Negroes of his colonies were to be made ſlaves; but it being ſtrongly urged to him as the readieſt means for their converſion, he acquieſced without farther ſcruple.

(d) Labat's new voyage to the iſles of America, vol. 4. p. 114. in 1752. 12mo.

CHAP.

CHAP. V.

Of the Slavery of the Negroes.

Book XV. Chap. 5.

WERE I to vindicate our right to make ſlaves of the Negroes, theſe ſhould be my arguments.

The Europeans, having extirpated the Americans, were obliged to make ſlaves of the Africans, for clearing ſuch vaſt tracts of land.

Sugar would be too dear, if the plants which produce it were cultivated by any other than ſlaves.

Theſe creatures are all over black, and with ſuch a flat noſe, that they can ſcarcely be pitied.

It is hardly to be believed that God, who is a wiſe Being, ſhould place a ſoul, eſpecially a good ſoul, in ſuch a black ugly body.

It is ſo natural to look upon colour as the criterion of human nature, that the Aſiatics, among whom eunuchs are employed, always deprive the *Blacks* of their reſemblance to us, by a more opprobrious diſtinction.

The colour of the ſkin may be determined by that of the hair, which among the Ægyptians, the beſt philoſophers in the world, was of ſuch importance, that they put to death all the red-haired men who fell into their hands.

The Negroes prefer a glaſs necklace to that gold which polite nations ſo highly value: can there be a greater proof of their wanting common ſenſe?

It is impoſſible for us to ſuppoſe theſe creatures to be men, becauſe allowing them to be men, a ſuſpicion would follow, that we ourſelves are not Chriſtians.

Weak

Weak minds exaggerate too much the wrong done to the Africans. For were the caſe as they ſtate it, would the European powers, who make ſo many needleſs conventions among themſelves, have failed to enter into a general one, in behalf of humanity and compaſſion?

CHAP. VI.

The true Origin of the Right of Slavery.

IT is time to enquire into the true origin of the right of ſlavery. It ought to be founded on the nature of things; let us ſee if there be any caſes where it can be derived from thence.

In all deſpotic governments people make no difficulty in ſelling themſelves; the political ſlavery in ſome meaſure annihilates the civil liberty.

According to Mr. Perry (e), the Muſcovites ſell themſelves very readily: their reaſon for it is evident; their liberty is not worth keeping.

(e) Preſent State of Ruſſia.

At *Achim* every one is for ſelling himſelf. Some of the chief lords (f) have not leſs than a thouſand ſlaves, all principal merchants, who have a great number of ſlaves themſelves, and theſe alſo are not without their ſlaves. Their maſters are their heirs, and put them into trade. In thoſe ſtates, the freemen being overpowered by the government, have no better reſource than that of making themſelves ſlaves to the tyrants in office.

(f) Dampier's voyages, Vol. 3.

This is the true and rational origin of that mild law of ſlavery, which obtains in ſome countries: and mild it ought to be, as founded on the free choice a man makes of a maſter, for his own benefit;

Book XV. Chap. 7.

nefit; which forms a mutual convention betwixt the two parties.

CHAP. VII.

Another Origin of the Right of Slavery.

THERE is another origin of the right of ſlavery, and even of the moſt cruel ſlavery, which is to be ſeen among men.

There are countries where the exceſs of heat enervates the body, and renders men ſo ſlothful and diſpirited, that nothing but the fear of chaſtiſement can oblige them to perform any laborious duty: ſlavery is there more reconcileable to reaſon; and the maſter being as lazy with reſpect to his ſovereign, as his ſlave is with regard to him, this adds a political, to a civil ſlavery.

(s) Polit. Lib. I. c. 1.

Ariſtotle (s) endeavours to prove, that there are natural ſlaves; but what he ſays is far from proving it. If there be any ſuch, I believe they are thoſe of whom I have been ſpeaking.

But as all men are born equal, ſlavery muſt be accounted unnatural, though in ſome countries, it be founded on natural reaſon; and a wide difference ought to be made betwixt ſuch countries, and thoſe in which even natural reaſon rejects it, as in Europe, where it has been ſo happily aboliſhed.

Plutarch in the life of Numa, ſays, that in Saturn's time, there was neither ſlave nor maſter. Chriſtianity has reſtored that age in our climates.

CHAP.

CHAP. VIII.

Inutility of Slavery among us.

NATURAL ſlavery, then, is to be limited to ſome particular parts of the world. In all other countries even the moſt ſervile drudgeries may be performed by freemen.

Experience verifies my aſſertion. Before Chriſtianity had aboliſhed civil ſlavery in Europe, working in the mines was judged too toilſome for any but ſlaves or malefactors: at preſent there are men employed in them, who are known to live * comfortably. The magiſtrates have, by ſome ſmall privileges, encouraged this profeſſion; to an increaſe of labour, they have joined an increaſe of gain; and have gone ſo far as to make thoſe people better pleaſed with their condition, than with any other which they could have embraced.

No labour is ſo heavy, but it may be brought to a level with the workman's ſtrength, when regulated by equity, and not by avarice. The violent fatigues which ſlaves are made to undergo in other parts, may be ſupplied by a ſkilful uſe of ingenious machines. The Turkiſh mines in the Bannat of Temeſwar, though richer than thoſe of Hungary, did not yield ſo much; becauſe the working of them depended intirely on the ſtrength of their ſlaves.

I know not whether this article be dictated by my underſtanding, or by my heart. Poſſibly there

* As may be ſeen in the mines of Hartz in Lower Saxony, and in thoſe of Hungary.

BOOK XV. Chap. 9.

is not that climate upon earth, where the moſt laborious ſervices might not with proper encouragement, be performed by freemen. Bad laws having made lazy men; they have been reduced to ſlavery, becauſe of their lazineſs.

CHAP. IX.

Several Kinds of Slavery.

SLAVERY is of two kinds, real and perſonal. The real annexes the ſlave to the land, which Tacitus makes (h) the condition of ſlaves among the Germans. They were not employed in the family; a ſtated tribute of corn, cattle, or other moveables, paid to their maſter, was the whole of their ſervitude. And ſuch a ſervitude ſtill continues in Hungary, Bohemia, and ſeveral parts of lower Germany.

(h) *De moribus Germanorum.*

Perſonal ſlavery conſiſts in domeſtic ſervices, and relates more to the maſter's perſon.

The worſt degree of ſlavery is, when it is at once both real and perſonal, as that of the Helotes among the Lacedæmonians. They underwent the fatigues of the field, and ſuffered all manner of inſults at home. This Helotiſm is contrary to the nature of things. Real ſlavery is to be found only among nations * remarkable for their ſimplicity of life; all family buſineſs being done by the wives and children. Perſonal ſlavery is peculiar to voluptuous nations; luxury requiring the ſervice of ſlaves in the houſe. But Helotiſm joins in the ſame perſons the ſlavery

* Tacitus *de moribus German.* ſays, the maſter is not to be diſtinguiſhed from the ſlave by any delicacy of living.

eſtabliſhed

eſtabliſhed by voluptuous nations, and that of the moſt ſimple. BOOK XV. Chap. 10, and 11.

CHAP. X.

Regulations neceſſary in reſpect to Slavery.

BUT of whatſoever kind the ſlavery be, the civil laws ſhould endeavour on the one hand to aboliſh the abuſes of it, and on the other to guard againſt its dangers.

CHAP. XI.

Abuſes of Slavery.

IN Mahometan ſtates (i), not only the life and goods of female-ſlaves, but alſo what is called their virtue or honor, are at their maſter's diſpoſal. One of the misfortunes of thoſe countries is, that the greateſt part of the nation are born only to be ſubſervient to the pleaſures of the other. This ſervitude is alleviated by the lazineſs in which ſuch ſlaves ſpend their days; which is an additional diſadvantage to the ſtate.

(i) Sir John Chardin's travels to Perſia.

It is this indolence which renders the (k) Eaſtern ſeraglios ſo delightful to thoſe very perſons, whom they were made to confine. People who dread nothing but labour, may imagine themſelves happy in thoſe places of indolence and eaſe. But this ſhews how contrary they are to the very intent of the inſtitution of ſlavery.

(k) Sir John Chardin, Vol. II. in his deſcription of the market of Izagour.

Reaſon requires that the maſter's power ſhould not extend to what does not appertain to his ſervice: Slavery ſhould be calculated for utility, and not for pleaſure. The laws of chaſtity ariſe from

Book XV. Chap. 11.

those of nature, and ought in all nations to be respected.

If a law which preserves the chastity of slaves, be good in those states where an arbitrary power bears down all before it, how much more will it be so in monarchies, and how much more still in republics?

(l) Lib. 1. Tit. 32. § 5.

The law of the Lombards (l) has a regulation which ought to be adopted by all governments. "If a master debauches his slave's wife, the slave "and his wife shall be restored to their freedom." An admirable expedient, which, without severity, lays a powerful restraint on the incontinence of masters!

The Romans seem to have erred on this head. They allowed an unlimited scope to the master's lusts, and, in some measure, denied their slaves the privilege of marrying. It is true, they were the lowest part of the nation; yet there should have been some care taken of their morals; especially, as in prohibiting their marriage, they corrupted the morals of the citizens.

CHAP. XII.

Danger from the Multitude of Slaves.

THE multitude of slaves has different effects in different governments. It is no grievance in a despotic state, where the political servitude of the whole body takes away the sense of civil slavery. Those who are called freemen, in reality are little more so than they who do not come within that class; and as the latter in quality of eunuchs, freedmen, or slaves, have generally

rally the management of all affairs, the condition of a freeman and that of a ſlave are very nearly allied. This makes it therefore almoſt a matter of indifference whether in ſuch ſtates the ſlaves be few or numerous.

But in moderate governments, it is a point of the higheſt importance, that there ſhould not be a great number of ſlaves. The political liberty of thoſe ſtates adds to the value of civil liberty; and he who is deprived of the latter, is alſo bereft of the former. He ſees the happineſs of a ſociety, of which he is not ſo much as a member; he ſees the ſecurity of others fenced by laws, himſelf without any protection. He perceives that his maſter has a ſoul, capable of enlarging itſelf; while his own labours under a continual depreſſion. Nothing more aſſimilates a man to a beaſt than living among freemen, himſelf a ſlave. Such people as theſe are natural enemies of the ſociety; and their number muſt be dangerous.

It is not therefore to be wondered at, that moderate governments have been ſo frequently diſturbed by the revolts of ſlaves; and that this ſo ſeldom happens in * deſpotic ſtates.

CHAP. XIII.

Of armed Slaves.

THE danger of arming ſlaves is not ſo great in monarchies as in republics. In the former, a warlike people, and a body of nobility, are a ſufficient check upon theſe armed ſlaves; whereas

* The revolt of the Mamelucs was a different caſe; this was a body of the militia who uſurped the empire.

the pacific members of a republic would have a hard task to quell a set of men, who having offensive weapons in their hands, would find themselves a match for the citizens.

The Goths, who conquered Spain, spread themselves over the country, and soon became very weak. They made three important regulations: they abolished an ancient custom which prohibited intermarriages with the (m) Romans; they enacted that all the freedmen (n) belonging to the Fiscus should serve in war, under penalty of being reduced to slavery; and they ordained that each Goth should arm and bring into the field the tenth part (o) of his slaves. This was but a small proportion: besides, these slaves thus carried to the field, did not form a separate body; they were in the army, and might be said to continue in the family.

(m) Law of the Visigoths, lib. 3. tit. 1. §. 1.

(n) Ibid. lib. 5. tit. 17. §. 20.

(o) Ibid. lib. 9. tit. 2. §. 9.

CHAP. XIV.

The same Subject continued.

WHEN a whole nation is of a martial temper, the slaves in arms are less to be feared.

By a law of the Alemans, a slave who had committed a clandestine theft (p), was liable to the same punishment as a freeman in the like case; but if he was found guilty of an open robbery (q), he was only bound to restore the things so taken. Among the Alemans, courage and intrepidity extenuated the guilt of an action. They employed their slaves in their wars. Most republics have been attentive to dispirit their slaves: but

(p) Law of the Alemans, c. 5. §. 3.

(q) Law of the Alemans, c. 5. §. 5. *per virtutem.*

but the Alemans relying on themſelves, and being always armed, were ſo far from fearing theirs, that they were rather for augmenting their courage; they were the inſtruments either of their depredations or of their glory.

CHAP. XV.

Precautions to be uſed in Moderate Governments.

LENITY and humane treatment may prevent the dangers to be apprehended from the multitude of ſlaves in a moderate government. Men grow reconciled to every thing, and even to ſervitude, if not aggravated by the ſeverity of the maſter. The Athenians treated their ſlaves with great lenity; and this ſecured that ſtate from the commotions raiſed by the ſlaves among the auſtere Lacedæmonians.

It does not appear that the primitive Romans met with any trouble from their ſlaves. Thoſe civil broils which have been compared to the Punic wars, were the conſequence of their having diveſted themſelves of all humanity towards their ſlaves.

A frugal and laborious people generally treat their ſlaves more kindly, than thoſe who are above labour. The primitive Romans uſed to live, work, and eat with their ſlaves; in ſhort, they behaved towards them with juſtice and humanity. The greateſt puniſhment they made them ſuffer, was to make them paſs before their neighbours with a forked piece of wood on their backs.

* Sicily, ſays Florus, ſuffered more in the ſervile than in the Punic war. Lib. 3.

Their

BOOK XV. Chap. 15.

Their manners were ſufficient to ſecure the fidelity of their ſlaves; ſo that there was no neceſſity for laws.

But when the Romans aggrandized themſelves; when their ſlaves were no longer the companions of their labour, but the inſtruments of their luxury and pride; as they then wanted morals, they had need of laws. It was even neceſſary for theſe laws to be of the moſt terrible kind, in order to eſtabliſh the ſafety of thoſe cruel maſters, who lived with their ſlaves as in the midſt of enemies.

They made the Sillanian Senatus-Conſultum, and other laws (r) which decreed, that when a maſter was murdered, all the ſlaves under the ſame roof, or in any place ſo near the houſe, as to be within the hearing of a man's voice, ſhould without diſtinction be condemned to die. Thoſe who, in this caſe, ſheltered a ſlave, in order to ſave him, were puniſhed as murderers (s); he whom his maſter * ordered to kill him, and who obeyed, was reputed guilty; even he who did not hinder him from killing himſelf, was liable to be puniſhed (t). If a maſter was murdered on a journey, they put to death (u) thoſe who were with him, and thoſe who fled. All theſe laws took place even againſt perſons whoſe innocence was proved; the intent of them was to inſpire their ſlaves with a prodigious reſpect for their maſter. They were not dependent on the civil government, but on a fault or imperfection of the civil government. They were not derived from the equity of civil laws, ſince

(r) See the whole title of the *Senat. Conſ. Syll.* in ff.

(s) Leg. ſiquis, §. 12. ff. *de Senat. Conſult. Sillan.*

(t) Leg. 1. §. 22. ff. *de Senat. Conſult. Sillan.*

(u) Leg. 1. §. 31. ff. *ibid.*

* When Antony commanded Eros to kill him, it was the ſame as commanding him to kill himſelf, becauſe if he had obeyed, he would have been puniſhed as the murderer of his maſter.

they were contrary to the principle of thoſe laws. They were properly founded on the principles of war, with this difference, that the enemies were in the boſom of the ſtate. The Sillanian Senatus-Conſultum was derived from the law of nations, which requires that a ſociety, however imperfect, ſhould be preſerved. BOOK XV. Chap. 16.

It is a misfortune in government when the magiſtrates thus find themſelves under a neceſſity of making cruel laws: becauſe they have rendered obedience difficult, they are obliged to increaſe the penalty of diſobedience, or to ſuſpect the ſlave's fidelity. A prudent legiſlator foreſees the ill conſequences of rendering the legiſlature terrible. The ſlaves amongſt the Romans could have no confidence in the laws; and therefore the laws could have none in them.

CHAP. XVI.

Regulations between Maſters and Slaves.

THE magiſtrate ought to take care that the ſlave has his food and raiment; and this ſhould be regulated by law.

The laws ought to provide that care be taken of them in ſickneſs and old age. Claudius (x) decreed, that the ſlaves, who, in ſickneſs, had been abandoned by their maſters, ſhould, in caſe they recovered, be emancipated. This law inſured their liberty; but ſhould not there have been ſome care alſo taken to preſerve their lives?

(x) Xiphilin *in Claudio.*

When the law permitted a maſter to take away the life of his ſlave, he was inveſted with a power which he ought to exerciſe as judge, and not as maſter;

Book XV. Chap. 16.

master; it was necessary, therefore that the law should ordain those formalities, which remove the suspicion of an act of violence.

When fathers, at Rome, were no longer permitted to put their children to death, the magistrates ordained the (y) punishment which the father would have inflicted. A like custom between the master and his slaves would be highly reasonable in a country, where masters have the power of life and death.

(y) See law 3. in the Code *de patriâ potestate*, by the emperor Alexander.

The law of Moses was extremely severe. "If "a man struck his servant so that he died under "his hand, he was to be punished; but if he "survived a day or two, no punishment ensued, "because he was his money*." Strange that a civil institution should thus relax the law of nature!

By a law of the Greeks (z) a slave too severely treated by his master, might insist upon being sold to another. In latter times there was a law of the same nature (a) at Rome. A master displeased with his slave, and a slave with his master, ought to be separated.

(z) Plutarch *on superstition.*

(a) See the constitution of Antoninus Pius, *Institut. Lib.* 1. *tit.* 7.

When a citizen uses the slave of another ill, the latter ought to have the liberty of complaining before the judge. The laws (b) of Plato and of most nations took away from slaves the right of natural defence. It was necessary then that they should give them a civil defence.

(b) Lib. 9.

At Sparta, slaves could have no justice against either insults or injuries. So excessive was their misery, that they were not only the slaves of a citizen, but also of the public; they belonged to all, as well as to one. At Rome, when they con-

* Lev. c. 21. v. 20.

sidered

sidered the injury done to a slave, they had regard only to the * interest of the master. In the breach of the Aquilian law, they confounded a wound given to a beast, and that given to a slave; they regarded only the diminution of their value. At Athens (c), he who had abused the slave of another was punished severely, and sometimes even with death. The law of Athens was very reasonable, in not adding the loss of security to that of liberty.

(c) *Demosthenes Orat. contra Midiam*, p. 610. edition of Frankfort in 1604.

CHAP. XVII.

Of Infranchisements.

IT is easy to perceive that many slaves in a republican government create a necessity of making many free. The evil is, if they have too great a number of slaves, they cannot keep them in due bounds; if they have too many freedmen, they cannot live, and must become a burthen to the republic: besides, it may be as much in danger from the multitude of freedmen, as from that of slaves. It is necessary therefore that the law should have an eye to these two inconveniencies.

The several laws and decrees of the senate made at Rome, both for and against slaves, sometimes to limit, and at other times to facilitate their infranchisement, plainly shew the embarassment in which they found themselves in this respect. There were even times in which they durst not make laws. When under Nero (d) they demanded of the senate a permission for the masters to reduce again

(d) Annals of Tacitus, lib. 13.

* This was frequently the spirit of the laws of those nations who came out of Germany, as may be seen by their codes.

to

Book XV. Chap. 17.

to ſlavery the ungrateful freedmen, the emperor declared that it was their duty to decide the affairs of individuals, and to make no general decree.

Much leſs can I determine what ought to be the regulations of a good republic in ſuch an affair; this depends on too many circumſtances. Let us however make ſome reflections.

A conſiderable number of freedmen ought not ſuddenly to be made by a general law. We know that among the Volſinienſes (e) the freedmen becoming maſters of the ſuffrages, enacted an abominable law, which gave them the right of lying the firſt night with the young women married to the free-born.

(e) Freinſhemius's Supplement, 2d Decad. lib. 5.

There are ſeveral ways of inſenſibly introducing new citizens into a republic. The laws may favour the acquiring a *peculium*, and put ſlaves into a condition of buying their liberty: they may preſcribe a term to ſervitude like thoſe of Moſes, which limited that of the (f) Hebrew ſlaves to ſix years. It is eaſy to enfranchiſe every year a certain number of thoſe ſlaves, who by their age, health or induſtry, are capable of getting a ſubſiſtence. The evil may be even cured in its root: as a great number of ſlaves are connected with the ſeveral employments which are given them; to divide amongſt the free-born a part of theſe employments, for example, commerce or navigation, is diminiſhing the number of ſlaves.

(f) Exodus xxi.

When there are many freedmen, it is neceſſary that the civil laws ſhould determine what they owe to their patron, or that theſe duties ſhould be fixed by the contract of infranchiſement.

It is certain that their condition ſhould be more favoured in the civil, than in the political ſtate; becauſe,

because, even in a popular government, the power ought not to fall into the hands of the vulgar.

At Rome, where they had so many freedmen, the political laws with regard to them, were admirable. They gave them very little, and excluded them almost from nothing: they had even a share in the legislature, but the resolutions they were capable of taking were almost of no weight. They might bear a part in the public offices, and even in the dignity of the priesthood (g); but this privilege was in some sort rendered useless by the disadvantages they had to encounter in the elections. They had a right to enter into the army; but they were to be registered in a certain class of the *census*, before they could be soldiers. Nothing hindered the (h) freedmen from being united by marriage with the families of the free-born; but they were not permitted to mix with those of the senators. In short, their children were free-born, though they were not so themselves.

(g) Annals of Tacitus, lib. 3.

(h) Augustus's speech in Dio, l. 56.

CHAP. XVIII.

Of Freedmen and Eunuchs.

THUS in a republican government, it is frequently of advantage, that the situation of the freedmen be but little below that of the free-born, and that the laws be calculated to remove a dislike of their condition. But in a despotic government, where luxury and arbitrary power prevail, they have nothing to do in this respect; the freedmen generally find themselves above the free-born. They rule in the court

Book XVI. Chap. 18.

court of the prince, and in the palaces of the great; and as they ſtudy the foibles, and not the virtues of their maſter, they lead him intirely by the former, not by the latter. Such were the freedmen of Rome in the times of the emperors.

When the principal ſlaves are eunuchs, let never ſo many privileges be granted them, they can hardly be regarded as freedmen. For as they are incapable of having a family of their own, they are naturally attached to that of another; and it is only by a kind of fiction that they are conſidered as citizens.

And yet there are countries where the magiſtracy is intirely in their hands. "In * Tonquin, (t) Vol. 3. "ſays Dampier (t), all the mandarins, civil and "military, are eunuchs." They have no families, and though they are naturally avaricious, the maſter or the prince benefits in the end by this very paſſion.

Dampier tells us too, that in this country the eunuchs cannot live without women, and therefore marry. The law which permits their marriage may be founded partly on their reſpect for theſe eunuchs, and partly on their contempt of the fair-ſex.

Thus they are truſted with the magiſtracy, becauſe they have no family; and permitted to marry, becauſe they are magiſtrates.

Then it is that the ſenſe which remains would fain ſupply that which they have loſt; and the enterprizes

* It was formerly the ſame in China. The two Mahometan Arabs who travelled thither in the ninth century, uſe the word eunuch, whenever they ſpeak of the governor of a city.

of

of deſpair become a kind of enjoyment. So in Milton, that ſpirit who has nothing left but deſires, enraged at his degradation, would make uſe of his impotency itſelf. Book XV. Chap. 18.

We ſee in the hiſtory of China a great number of laws to deprive eunuchs of all civil and military employments; but they always returned to them again. It ſeems as if the eunuchs of the eaſt were a neceſſary evil.

BOOK XVI.

How the Laws of domeſtic Slavery have a Relation to the Nature of the Climate.

CHAP. I.

Of domeſtic Servitude.

Book XVI. Chap. 1. and 2.

SLAVES are eſtabliſhed for the family; but they are not a part of it. Thus I diſtinguiſh their ſervitude from that which the women in ſome countries ſuffer, and which I ſhall properly call domeſtic ſervitude.

CHAP. II.

That in the Countries of the South there is a natural Inequality between the two Sexes.

WOMEN, in hot climates, are * marriageable at eight, nine, or ten years of age; thus, in thoſe countries, infancy and marriage generally go together. They are old at twenty: Their reaſon therefore never accompanies their beauty. When beauty demands the empire, the want of reaſon forbids the claim; when reaſon is obtained,

* Mahomet married Cadhisja at five, and took her to his bed at eight years old. In the hot countries of Arabia and the Indies, girls are marriageable at eight years of age, and are brought to bed the year after. *Prideaux, Life of Mahomet.* We ſee women in the kingdom of Algiers pregnant at nine, ten, and eleven years of age. *Hiſt. of the Kingdom of Algiers, by Logier de Taſſis*, p. 61.

beauty is no more. These women ought then to be in a ſtate of dependence; for reaſon cannot procure in old age, that empire which even youth and beauty could not give. It is therefore extremely natural that in theſe places, a man, when no law oppoſes it, ſhould leave one wife to take another, and that polygamy ſhould be introduced.

In temperate climates where the charms of women are beſt preſerved, where they arrive later at maturity, and have children at a more advanced ſeaſon of life, the old age of their huſbands in ſome degree follows theirs; and as they have more reaſon and knowledge at the time of marriage, if it be only on account of their having continued longer in life, it muſt naturally introduce a kind of equality between the two ſexes, and, in conſequence of this, the law of having only one wife.

In cold countries the almoſt neceſſary cuſtom of drinking ſtrong liquors, eſtabliſhes intemperance amongſt men. Women, who in this reſpect, have a natural reſtraint becauſe they are always on the defenſive, have therefore the advantage of reaſon over them.

Nature, which has diſtinguiſhed men by their reaſon and bodily ſtrength, has ſet no other bounds to their power than thoſe of this ſtrength and reaſon. It has given charms to women, and ordained that their aſcendant over man ſhall end with theſe charms: But in hot countries, theſe are found only at the beginning, and never in the progreſs of life.

Thus the law which permits only one wife, is phyſically conformable to the climate of Europe,

BOOK XVI. Chap. 3.

and not to that of Aſia. This is the reaſon why Mahometaniſm was ſo eaſily eſtabliſhed in Aſia, and with ſuch difficulty extended in Europe; why Chriſtianity is maintained in Europe, and has been deſtroyed in Aſia; and in fine, why the Mahometans have made ſuch progreſs in China, and the Chriſtians ſo little. Human reaſons however are ſubordinate to that ſupreme cauſe, who does whatever he pleaſes, and renders every thing ſubſervient to his will.

(k) See Jornandes *de Regno & tempor. Succeſ.* and the eccleſiaſtic Hiſtorians.

Some particular reaſons induced Valentinian (k) to permit polygamy in the empire. That law, ſo improper for our climates, was abrogated (l) by Theodoſius, Arcadius, and Honorius.

CHAP. III.

That a Plurality of Wives greatly depends on the Means of ſupporting them.

(l) See law 7. of the Code *de Judæis & Cælicolis*, and Nov. 18. c. 5.

THOUGH in countries where polygamy is once eſtabliſhed, the number of wives is principally determined by the opulence of the huſband; yet it cannot be ſaid that opulence eſtabliſhed polygamy in thoſe ſtates; ſince poverty may produce the ſame effect, as I ſhall prove when I come to ſpeak of the ſavages.

Polygamy in powerful nations is leſs a luxury in itſelf, than the occaſion of great luxury. In hot * climates they have few wants, and it coſts little to maintain a wife and children; they may therefore have a great number of wives.

* In Ceylon a man may live on ten ſols a month; they eat nothing there but rice and fiſh. *Collection of voyages made to eſtabliſh an India Company.*

CHAP. IV.

That the Law of Polygamy is an affair that depends on Calculation.

According to the calculations made in several parts of Europe, there are here born more boys than girls *; on the contrary, by the accounts we have of Asia, there are there born more † girls than boys. The law which in Europe allows only one wife, and that in Asia which permits many, have therefore a certain relation to the climate.

In the cold climates of Asia, there are born as in Europe, more males than females; and from hence, say the (m) Lamas, is derived the reason of that law, which amongst them, permits a woman to have ‡ many husbands.

(m) Du Halde's Hist. of China, Vol. 4.

But it is difficult for me to believe that there are many countries, where the disproportion can be great enough for any exigency to justify the introducing either the law in favour of many wives, or that of many husbands. This would only imply, that a majority of women, or even a majority of men, is more conformable to nature in certain countries than in others.

* Dr. Arbuthnot finds that in England the number of boys exceeds that of girls; but people have been to blame to conclude that the case is the same in all climates.

† See Kempfer, who relates that upon numbering the people of Meaco, there were found 182072 males and 223573 females.

‡ Albuzeir-el-hassen, one of the Mahometan Arabs, who, in the ninth century, went into India and China, thought this custom a prostitution. And indeed nothing could be more contrary to the ideas of a Mahometan.

Book XVI. Chap. 5.

I confeſs, that if what hiſtory tells us be true, that, at Bantam (a) there are ten women to one man, this muſt be a caſe particularly favourable to polygamy.

In all this I only give their reaſons, but do not juſtify their cuſtoms.

(a) Collection of voyages for the eſtabliſhment of an India Company. Vol. I.

CHAP. V.

The reaſon of a Law of Malabar.

IN the tribe of the * Naires, on the coaſt of Malabar, the men can have only one wife, while a woman, on the contrary, may have many huſbands. The origin of this cuſtom is not I believe difficult to diſcover. The Nairés are the tribe of nobles, who are the ſoldiers of all thoſe nations. In Europe, ſoldiers are forbid to marry: in Malabar, where the climate requires greater indulgence, they are ſatisfied with rendering marriage as little burthenſome to them as poſſible; they give one wife amongſt many men; which conſequently diminiſhes the attachment to a family, and the cares of houſe-keeping, and leaves them in the free poſſeſſion of a military ſpirit.

* See Francis Pirard, c. 27. Edifying Letters, 3d and 10th collection on the Malleami on the coaſt of Malabar. This is conſidered as an abuſe of the military profeſſion, as a woman, ſays Pirard, of the tribe of the Bramins, never would marry many huſbands.

CHAP.

CHAP. VI.

Of Polygamy conſidered in itſelf.

WITH regard to polygamy in general, independently of the circumſtances which may render it tolerable, it is not of the leaſt ſervice to mankind, nor to either of the two ſexes, whether it be that which abuſes, or that which is abuſed. Neither is it of ſervice to the children; for one of its greateſt inconveniencies is, that the father and mother cannot have the ſame affection for their offspring; a father cannot love twenty children with the ſame tenderneſs as a mother can love two. It is much worſe when a wife has many huſbands; for then paternal love is only held by this opinion, that a father may believe, if he will, or that others may believe, that certain children belong to him. Book XVI. Chap. 6.

They ſay, that the emperor of Morocco has women of all colours, white, black, and tawny, in his ſeraglio. But the wretch has ſcarce need of a ſingle colour.

Beſides, the poſſeſſion of many wives does not always prevent their entertaining deſires * for thoſe of others: it is with luſt as with avarice, whoſe thirſt increaſes by the acquiſition of treaſure.

In the reign of Juſtinian, many philoſophers, diſpleaſed with the conſtraint of Chriſtianity, retired into Perſia. What ſtruck them the moſt, ſays Agathias (°), was, that polygamy was permitted

(°) Life and actions of Juſtinian, amongſt p. 403.

* This is the reaſon why women in the eaſt are ſo carefully concealed.

Book XVI. Chap. 7.

amongſt men, who did not even abſtain from adultery.

May I not ſay that a plurality of wives leads to that paſſion which nature diſallows? for one depravation always draws on another. I remember that in the revolution which happened at Conſtantinople, when ſultan Achmet was depoſed, hiſtory ſays, that the people having plundered the Kiaya's houſe, they found not a ſingle woman; they tell us that at (p) Algiers, in the greateſt part of their ſeraglios, they have none at all.

(p) Hiſt. of Algiers by Logier de Taſſis.

CHAP. VII.

Of an Equality of treatment in Caſe of many Wives.

FROM the law which permitted a plurality of wives, followed that of an equal behaviour to each. Mahomet, who allowed of four, would have every thing, as proviſions, dreſs, and conjugal duty, equally divided between them. This law is alſo in force in the Maldivian iſles (q) where they are at liberty to marry three wives.

(q) See Pirard, c. 12.

The law of Moſes (r) even declares, that if any one has married his ſon to a ſlave, and this ſon ſhould afterwards eſpouſe a free woman, her food, her raiment, and her duty of marriage, ſhall he not diminiſh. They might give more to the new wife; but the firſt was not to have leſs than ſhe had before.

(r) Exod. xxi. 10, 11.

CHAP.

CHAP. VIII.

Of the Separation of Women from Men.

THE prodigious number of wives poſſeſſed by thoſe who live in rich and voluptuous countries, is a conſequence of the law of polygamy. Their ſeparation from men, and their cloſe confinement, naturally follow from the greatneſs of this number. Domeſtic order renders this neceſſary; thus an inſolvent debtor ſeeks to conceal himſelf from the purſuit of his creditors. There are climates where the impulſes of nature have ſuch force that morality has almoſt none. If a man be left with a woman, the temptation and the fall will be the ſame thing; the attack certain, the reſiſtance none. In theſe countries, inſtead of precepts, they have recourſe to bolts and bars.

Book XVI. Chap. 8. and 9.

One of the Chineſe claſſic authors conſiders the man as a prodigy of virtue, who finding a woman alone in a diſtant apartment, can forbear making uſe of force *.

CHAP. IX.

Of the Connexion beween domeſtic and political Government.

IN a republic the condition of citizens is moderate, equal, mild, and agreeable; every thing par-

* "It is an admirable touch-ſtone, to find by one's ſelf a "treaſure, and to know the right owner; or to ſee a beautiful "woman in a lonely apartment; or to hear the cries of an ene-"my, who muſt periſh without our aſſiſtance." Tranſlation of a Chineſe piece of morality, which may be ſeen in Du Halde, Vol. 3. p. 151.

takes

takes of the benefit of public liberty. An empire over the women cannot, amongſt them, be ſo well exerted; and where the climate demands this empire, it is moſt agreeable to a monarchical government. This is one of the reaſons why it has ever been difficult to eſtabliſh a popular government in the eaſt.

On the contrary, the ſlavery of women is perfectly conformable to the genius of a deſpotic government, which delights in treating all with ſeverity. Thus at all times have we ſeen in Aſia domeſtic ſlavery, and deſpotic government, walk hand in hand with an equal pace.

In a government which requires, above all things, that a particular regard be paid to its tranquility, and where the extreme ſubordination calls for peace, it is abſolutely neceſſary to ſhut up the women; for their intrigues would prove fatal to their huſbands. A government which has not time to examine into the conduct of its ſubjects, views them with a ſuſpicious eye, only becauſe they appear, and ſuffer themſelves to be known.

Let us only ſuppoſe that the levity of mind, the indiſcretions, the taſtes and caprices of our women, attended by their paſſions of a higher, and a lower kind, with all their active fire, and in that full liberty with which they appear amongſt us, were conveyed into an eaſtern government, where would be the father of a family who could enjoy a moment's repoſe? the men would be every where ſuſpected, every where enemies; the ſtate would be overturned, and the kingdom overflowed with rivers of blood.

CHAP.

CHAP. X.

The Principle on which the Morals of the Eaſt are founded.

IN the caſe of a multiplicity of wives, the more a family ceaſes to be united, the more ought the laws to reunite its detached parts in a common center; and the greater the diverſity of intereſts, the more neceſſary it is for the laws to bring them back to a common intereſt. Book XVI. Chap. 10.

This is more particularly done by confinement. The women ſhould not only be ſeparated from the men by the walls of the houſe; but they ought alſo to be ſeparated in the ſame incloſure, in ſuch a manner that each may have a diſtinct houſhold in the ſame family. From hence each derives all that relates to the practice of morality, modeſty, chaſtity, reſerve, ſilence, peace, dependence, reſpect, and love; and, in ſhort, a general direction of her thoughts to that which in its own nature is a thing of the greateſt importance, a ſingle and intire attachment to her family.

Women have naturally ſo many duties to fulfil, duties which are peculiarly theirs, that they cannot be ſufficiently excluded from every thing capable of inſpiring other ideas; from every thing that goes by the name of amuſements; and from every thing which we call buſineſs.

We find the manners more pure in the ſeveral parts of the eaſt, in proportion as the confinement of women is more ſtrictly obſerved. In great kingdoms, there are neceſſarily great lords. The greater their wealth, the more enlarged is their ability

ability of keeping their wives in an exact confinement, and of preventing them from entering again into ſociety. From hence it proceeds, that in the empires of Turky, Perſia, of the Mogul, China, and Japan, the manners of their wives are admirable.

But the caſe is not the ſame in India, where a multitude of iſlands, and the ſituation of the land, have divided the country into an infinite number of petty ſtates, which from cauſes that we have not here room to mention, are rendered deſpotic.

There are none there but wretches, ſome pillaging, and others pillaged. Their grandees have very moderate fortunes; and thoſe whom they call rich, have only a bare ſubſiſtence. The confinement of their women cannot therefore be very ſtrict; nor can they make uſe of any great precautions to keep them within due bounds; from hence it proceeds that the corruption of their manners is ſcarcely to be conceived.

We may there ſee to what an extreme the vices of a climate indulged in the full liberty, will carry licentiouſneſs. It is there that nature has a force, and modeſty a weakneſs, which exceeds all comprehenſion. At Patan (f) the wanton deſires * of the women are ſo outrageous, that the men are obliged to make uſe of a certain apparel to ſhelter them from their deſigns. According to

(f) Collection of voyages for the eſtabliſhment of an India company Vol. 2. p. 2.

* In the Maldivian iſles the fathers marry their daughters at ten and eleven years of age, becauſe it is a great ſin, ſay they, to ſuffer them to endure the want of a huſband, ſee Pirard, c. 12. At Bantam as ſoon as a girl is twelve or thirteen years old, ſhe muſt be married, if they would not have her lead a debauched life. *Collection of Voyages for the eſtabliſhment of an India Company*, p. 348.

Mr.

Mr. Smith *, things are not better conducted in the petty kingdoms of Guinea. In theſe countries, the two ſexes loſe even thoſe laws which properly belong to each.

CHAP. XI.

Of domeſtic Slavery independently of Polygamy.

IT is not only a plurality of wives, which in certain places of the eaſt requires their confinement, but alſo the climate itſelf. Thoſe who conſider the horrible crimes, the treachery, the dark villanies, the poiſonings, the aſſaſſinations, which the liberty of women has occaſioned at Goa, and in the Portugueſe ſettlements in the Indies, where religion permits only one wife; and who compare them with the innocence and purity of manners of the women of Turky, Perſia, Indoſtan, China, and Japan, will clearly ſee that it is frequently as neceſſary to ſeparate them from the men, when they have but one, as when they have many.

Theſe are things which ought to be decided by the climate. What purpoſe would it anſwer to ſhut up women in our northern countries, where their manners are naturally good; where all their paſſions are calm; and where love rules over the heart with ſo regular and gentle an empire, that

* Voyage to Guinea, part ſecond. "When the women "happen to meet with a man, they lay hold of him, and threaten "to make a complaint to their huſbands, if he ſlight their ad- "dreſſes. They ſteal into a man's bed, and wake him; and "if he refuſes to comply with their deſires, they threaten to ſuf- "fer themſelves to be caught *in flagranti*.

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the leaſt degree of prudence is ſufficent to conduct it?

It is a happineſs to live in thoſe climates which permit ſuch freedom of converſe, where that ſex which has moſt charms ſeems to imbelliſh ſociety, and where wives reſerving themſelves for the pleaſures of one, contribute to the amuſement of all.

CHAP. XII.

Of natural Modeſty.

ALL nations are equally agreed in fixing contempt and ignominy on the incontinence of women. Nature has dictated this to all. She has eſtabliſhed the attack, and ſhe has eſtabliſhed too the reſiſtance; and having implanted deſires in both, ſhe has given to the one boldneſs, and to the other ſhame. To individuals ſhe has granted a long ſucceſſion of years to attend to their preſervation; but to continue the ſpecies, ſhe has granted only a moment.

It is then far from being true, that to be incontinent is to follow the laws of nature; on the contrary, it is a violation of theſe laws, which can be obſerved only by behaving with modeſty and diſcretion.

Beſides, it is natural for intelligent beings to feel their imperfections. Nature has therefore fixed ſhame in our minds, a ſhame of our imperfections.

When therefore the phyſical power of certain climates violates the natural law of the two ſexes, and that of intelligent beings; it belongs to the legiſlature to make civil laws, with a view of oppoſing the nature of the climate, and re-eſtabliſhing the primitive laws.

CHAP.

CHAP. XIII.

Of Jealouſy.

WITH reſpect to nations we ought to diſtinguiſh between the paſſion of jealouſy, and a jealouſy ariſing from cuſtoms, manners, and laws. The one is a hot raging fever; the other, cold, but ſometimes terrible, may be joined with indifference and contempt. Book XVI. Chap. 13. and 14.

The one, an abuſe of love, derives its ſource from love itſelf. The other depends only on manners, on the cuſtoms of a nation, on the laws of the country, and ſometimes even on religion *.

It is generally the effect of the phyſical power of the climate; and at the ſame time, the remedy of this phyſical power.

CHAP. XIV.

Of the Eaſtern manner of domeſtic Government.

WIVES are changed ſo often in the eaſt, that they cannot have the power of domeſtic government. This care is therefore committed to the eunuchs, whom they intruſt with their keys, and the management of their families. "In Perſia, ſays Sir John Chardin, married women "are furniſhed with cloaths as they want them, "after the manner of children." Thus that care which ſeems ſo well to become them, that care which every where elſe is the firſt of their concerns, does not at all regard them.

* Mahomet deſired his followers to watch their wives; a certain Iman when he was dying ſaid the ſame thing; and Confucius preached the ſame doctrine.

CHAP.

CHAP. XV.

Of Divorce and Repudiation.

Book XVI. Chap. 15.

THERE is this difference between a divorce and a repudiation, that the former is made by mutual conſent ariſing from a mutual antipathy; while the latter is formed, by the will and for the advantage of one of the two parties, independently of the will and advantage of the other.

The neceſſity there is ſometimes for women to repudiate, and the difficulty there always is in doing it, render that law very tyrannical, which gives this right to men, without granting it to women. A huſband is the maſter of the houſe; he has a thouſand ways of confining his wife to her duty, or of bringing her back to it; ſo that in his hands it ſeems as if repudiation could be only a freſh abuſe of power. But a wife who repudiates, only makes uſe of a dreadful kind of remedy. It is always a great misfortune for her to go in ſearch of a ſecond huſband, when ſhe has loſt the moſt part of her attractions with another. One of the advantages attending the charms of youth in the female ſex is, that in an advanced age the huſband is led to complacency and love by the remembrance of paſt pleaſures.

It is then a *general rule*, that in all countries where the laws have given to men the power of repudiating, they ought alſo to grant it to women. Nay, in climates where women live in domeſtic ſlavery, one would think that the law ought to favour women with the right of repudiation, and huſbands only with that of divorce.

When

When wives are confined in a ſeraglio, the huſband ought not to repudiate on account of an oppoſition of manners; it is the huſband's fault if their manners are incompatible.

Repudiation on account of the barrenneſs of the woman, ought never to take place but where there is only one wife *: when there are many, this is of no importance to the huſband.

A law of the Maldivians † permitted them to take again a wife whom they had repudiated. A law of Mexico (t) forbad their being reunited under pain of death. The law of Mexico was more rational than that of the Maldivians: at the time even of the diſſolution, it attended to the perpetuity of marriage; inſtead of this, the law of the Maldivians ſeemed equally to ſport with marriage and repudiation.

(t) Hiſt. of the conqueſt of Mexico. by Solis, p. 499.

The law of Mexico admitted only of divorce. This was a particular reaſon for their not permitting thoſe who were voluntarily ſeparated, to be ever reunited. Repudiation ſeems chiefly to proceed from a haſtineſs of temper, and from the dictates of paſſion; while divorce appears to be an affair of deliberation.

Divorces are frequently of great political uſe; but as to the civil utility, they are eſtabliſhed only for the advantage of the huſband and wife, and are not always favourable to their children.

* It does not follow from hence that repudiation on account of ſterility, ſhould be permitted amongſt Chriſtians.

† They took them again preferably to any other, becauſe in this caſe there was leſs expence. *Pirard's Travels.*

CHAP. XVI.

Of Repudiation and Divorce amongſt the Romans.

BOOK XVI. Chap. 16.

ROMULUS permitted a huſband to repudiate his wife, if ſhe had committed adultery, prepared poiſon, or procured falſe keys. He did not grant to women the right of repudiating their huſbands. Plutarch (x) calls this, a law extremely ſevere.

(x) Life of Romulus.

(y) This was a law of Solon.

As the Athenian law gave (y) the power of repudiation to the wife as well as to the huſband, and as this right was obtained by the women amongſt the primitive Romans, notwithſtanding the law of Romulus, it is evident that this inſtitution was one of thoſe which the deputies of Rome brought from Athens, and which were inſerted into the laws of the twelve tables.

Cicero * ſays that the reaſons of repudiation ſprung from the law of the twelve tables. We cannot then doubt but that this law increaſed the number of the reaſons for repudiation eſtabliſhed by Romulus.

The power of divorce was alſo an appointment, or at leaſt a conſequence of the law of the twelve tables. For from the moment that the wife or the huſband had ſeparately the right of repudiation, there was a much ſtronger reaſon for their having the power of quitting each other by mutual conſent.

* Mimam res ſuas ſibi habere juſſit, ex duodecim tabulis cauſam addidit. Philip 2.

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The law did not require that they ſhould lay open the * cauſes of divorce. In the nature of the thing the reaſons for repudiation ſhould be given, while thoſe for a divorce are unneceſſary; becauſe whatever cauſes the law may admit as ſufficient to break a marriage, a mutual antipathy muſt be ſtronger than them all. Book XVI. Chap. 16.

The following fact mentioned by Dionyſius Halicarnaſſenſis (z), Valerius Maximus (a), and Aulus Gellius (b), does not appear to me to have the leaſt degree of probability: though they had at Rome, ſay they, the power of repudiating a wife; yet they had ſo much reſpect for the auſpices, that no body, for the ſpace of five hundred and twenty years, ever made † uſe of this right, till Carvilius Ruga repudiated his, becauſe of her ſterility. We need only be ſenſible of the nature of the human mind, to perceive how very extraordinary it muſt be for a law, to grant ſuch right to a whole nation, and yet for no body to make uſe of it. Coriolanus ſetting out on his exile, adviſed his (c) wife to marry a man more happy than himſelf. We have juſt been ſeeing that the law of the twelve tables, and the manners of the Romans, greatly extended the law of Romulus. But to what purpoſe were theſe extenſions, if they never made uſe of a power to repudiate? Beſides, if the citizens had ſuch a reſpect for the auſpices, that they would never repudiate, how came the legiſlators

(z) Lib. 2.
(a) Lib. 2. c. 4.
(b) Lib. 4. c. 3.
(c) See the ſpeech of Veturia in Dionyſ. Halic. lib. 8.

* Juſtinian altered this, Nov. 117. c. 10.

† According to Dionyſ. Halic. and Valerius Maximus; and five hundred and twenty-three according to Aulus Gellius. Neither did they agree in placing this under the ſame conſuls.

Book XVI. Chap. 16.

of Rome to have leſs than they? and how came the laws inceſſantly to corrupt their manners?

All that is ſurprizing in the fact in queſtion, will ſoon diſappear, only by comparing two paſſages in Plutarch. The regal law (d) permitted a huſband to repudiate in the three caſes already mentioned, and "it enjoined, ſays Plutarch (e), "that he who repudiated in any other caſe, ſhould "be obliged to give the half of his ſubſtance to "his wife, and that the other half ſhould be con-"ſecrated to Ceres." They might then repudiate in all caſes, if they were but willing to ſubmit to the penalty. No body had done this before Carvilius Ruga *; who, as Plutarch ſays in another place (f), "put away his wife for her ſterility two "hundred and thirty years after Romulus." That is, ſhe was repudiated ſeventy-one years before the law of the twelve tables, which extended both the power and the cauſes of repudiation.

(d) Plutarch's life of Romulus.

(e) Ibid.

(f) In his compariſon between Theſeus and Romulus.

The authors I have cited ſay, that Carvilius Ruga loved his wife; but that the cenſors made him take an oath to put her away, becauſe of her barrenneſs, to the end that he might give children to the republic; and that this rendered him odious to the people. We muſt know the genius and temper of the Romans, before we can diſcover the true cauſe of the hatred they had conceived againſt Carvilius. He did not fall into diſgrace with the people for repudiating his wife; this was an affair that did not at all concern them. But Carvilius had taken an oath to the cenſors, that by rea-

* Indeed ſterility is not a cauſe mentioned by the law of Romulus: but to all appearance, he was not ſubject to a confiſcation of his effects, ſince he followed the orders of the cenſors.

ſon

ſon of the ſterility of his wife, he would repudiate her to give children to the republic. This was a yoke which the people ſaw the cenſors were going to put upon them. I ſhall diſcover in the proſecution of this work (s), the repugnance which they always felt to regulations of the like kind. But whence can ſuch a contradiction betwixt thoſe authors ariſe? It is becauſe Plutarch examined into a fact, and the others have recounted a prodigy.

(s) Book 23. c. 9.

BOOK XVII.

How the Laws of political Servitude have a Relation to the Nature of the Climate.

CHAP. I.

Of political Servitude.

Book XVII. Ch. 1, & 2.

POLITICAL ſervitude does not leſs depend on the nature of the climate, than that which is civil and domeſtic; and this we ſhall now demonſtrate.

CHAP. II.

The Difference between Nations in point of Courage.

WE have already obſerved that great heat enervates the ſtrength and courage of men, and that in cold climates they have a certain vigor of body and mind, which renders them patient and intrepid, and qualifies them for arduous enterprizes. This remark holds good not only between different nations; but even in the different parts of the ſame country. In the north of China (a) people are more courageous than thoſe in the ſouth; and thoſe in the ſouth of Corea (b) have leſs bravery than thoſe in the north.

We ought not then to be aſtoniſhed, that the effeminacy of the people in hot climates, has almoſt always

(a) Du Halde, Vol. 1. p. 112.

(b) The Chineſe books make mention of this, *ibid.* Vol. 4. p. 448.

always rendered them ſlaves; and that the bravery of thoſe in cold climates has enabled them to maintain their liberties. This is an effect which ſprings from a natural cauſe. Book XVII. Chap. 3.

This has alſo been found true in America; the deſpotic empires of Mexico and Peru were near the Line, and almoſt all the little free nations were, and are ſtill, near the Poles.

CHAP. III.

Of the Climate of Aſia.

THE relations of travellers (c) inform us, "that "the vaſt continent of the north of Aſia, "which extends from forty degrees or thereabouts "to the pole, and from the frontiers of Muſcovy "even to the eaſtern ocean, is in an extremely "cold climate; that this immenſe tract of land is "divided by a chain of mountains which run from "weſt to eaſt, leaving Siberia on the north, and "Great Tartary on the ſouth; that the climate "of Siberia is ſo cold, that excepting a few "places, it is unſuſceptible of cultivation; and that "though the Ruſſians have ſettlements all along "the Irtis, they cultivate nothing; that this coun-"try produces only ſome little firs and ſhrubs; "that the natives of the country are divided into "wretched hords or tribes, like thoſe of Canada; "that the reaſon of this cold proceeds on the one "hand, from the height of the land, and on the "other, from the mountains, which, in propor-"tion as they run from ſouth to north, are le-"velled, in ſuch a manner, that the north wind "every where blows without oppoſition; that this

(c) See Travels to the North, Vol. 8. the Hiſt. of the Tartars and Du Halde, Vol. 4.

" wind which renders Nova Zembla uninhabita-
" ble, blowing in Siberia makes it a barren waſte;
" that in Europe, on the contrary, the mountains
" of Norway and Lapland are admirable bulwarks,
" which cover the northern countries from the
" wind; ſo that at Stockholm, which is about
" fifty-nine degrees latitude, the earth produces
" plants, fruits, and corn; and that about Abo,
" which is ſixty-one degrees, and even to ſixty-
" three and ſixty-four, there are mines of ſilver,
" and the land is fruitful enough.

We ſee alſo in theſe relations, " that Great
" Tartary, ſituated to the ſouth of Siberia, is al-
" ſo exceeding cold; that the country will not
" admit of cultivation; that nothing can be found
" but paſturage for their flocks and herds; that
" trees will not grow there, but only brambles,
" as in Iceland; that there are near China and
" India, ſome countries where there grows a kind
" of millet, but that neither corn nor rice will
" ripen; that there is ſcarcely a place in Chineſe
" Tartary at forty-three, forty-four, and forty-
" five degrees, where it does not freeze ſeven or
" eight months in the year, ſo that it is as cold as
" Iceland, though it might be imagined, from its
" ſituation, to be as hot as the ſouth of France;
" that there are no cities, except four or five tow-
" ards the eaſtern ocean, and ſome which the
" Chineſe, for political reaſons, have built near
" China; that in the reſt of Great Tartary, there
" are only a few ſituated in Buchar, Turqueſtan,
" and Cathay; that the reaſon of this extreme
" cold proceeds from the nature of the nitrous
" earth, full of ſaltpetre, and ſand, and more

" particularly from the height of the land. Father Verbieſt found, that a certain place eighty " leagues north of the great wall towards the " ſource of Kavamhuram, exceeded the height of " the ſea near Pekin three thouſand geometrical " paces; that this height * is the cauſe that though " almoſt all the great rivers of Aſia have their " ſource in this country, there is however ſo great " a want of water, that it can be inhabited only " near the rivers and lakes."

Theſe facts being laid down, I reaſon thus. Aſia has properly no temperate zone, as the places ſituated in a very cold climate immediately touch upon thoſe which are exceeding hot, that is Turky, Perſia, India, China, Corea, and Japan.

In Europe, on the contrary, the temperate zone is very extenſive, though ſituated in climates widely different from each other; there being no affinity between the climates of Spain and Italy, and thoſe of Norway and Sweden. But as the climate grows inſenſibly cold upon our advancing from ſouth to north, nearly in proportion to the latitude of each country; it thence follows that each reſembles the country joining to it, that there is no very extraordinary difference between them, and that, as I have juſt ſaid, the temperate zone is very extenſive.

From hence it comes, that in Aſia the ſtrong nations are oppoſed to the weak; the warlike, brave, and active people touch immediately on thoſe who are indolent, effeminate, and timorous: the one muſt therefore conquer, and the other be conquered. In Europe, on the contrary, ſtrong

* Tartary is then a kind of a flat mountain.

nations

nations are oppoſed to the ſtrong; and thoſe who join to each other have nearly the ſame courage. This is the grand reaſon of the weakneſs of Aſia, and of the ſtrength of Europe; of the liberty of Europe and of the ſlavery of Aſia: a cauſe that I do not recollect ever to have ſeen remarked. From hence it proceeds, that liberty in Aſia never increaſes; whilſt in Europe it is enlarged or diminiſhed, according to particular circumſtances.

The Ruſſian nobility have indeed been reduced to ſlavery by the ambition of one of their princes; but they have always diſcovered thoſe marks of impatience and diſcontent, which are never to be ſeen in the ſouthern climates. Have they not been able for a ſhort time to eſtabliſh an ariſtocratical government? Another of the northern kingdoms has loſt its laws; but we may truſt to the climate that they are not loſt in ſuch a manner as never to be recovered.

CHAP. IV.

The Conſequences reſulting from this.

WHAT we have now ſaid is perfectly conformable to hiſtory. Aſia has been ſubdued thirteen times; eleven by the northern nations, and twice by thoſe of the ſouth. In the early ages it was conquered three times by the Scythians; afterwards it was ſubdued once by the Medes, and once by the Perſians; again by the Greeks, the Arabs, the Moguls, the Turks, the Tartars, the Perſians, and the Afghans. I mention only the Upper Aſia, and ſay nothing of the invaſions made in the reſt of the ſouth or that part of the

world, which has moſt frequently ſuffered prodigious revolutions. BOOK XVII. Chap. 5.

In Europe, on the contrary, ſince the eſtabliſhment of the Greek and Phœnician colonies we know but of four great changes; the firſt cauſed by the conqueſt of the Romans; the ſecond by the inundation of barbarians, who deſtroyed thoſe very Romans; the third by the victories of Charlemain; and the laſt by the invaſions of the Normans. And if this be rightly examined, we ſhall find, even in theſe changes, a general ſtrength diffuſed through all the parts of Europe. We know the difficulty which the Romans met with in conquering Europe, and the eaſe and facility with which they invaded Aſia. We are ſenſible of the difficulties the northern nations had to encounter in overturning the Roman empire; of the wars, and labours of Charlemain; and of the ſeveral enterprizes of the Normans. The deſtroyers were inceſſantly deſtroyed.

CHAP. V.

That when the People in the North of Aſia, and thoſe of the North of Europe made conqueſts, the effects of the Conqueſt were not the ſame.

THE nations in the north of Europe conquered as freemen; the people in the north of Aſia conquered as ſlaves, and ſubdued others only to gratify the ambition of a maſter.

The reaſon is, that the people of Tartary, the natural conquerors of Aſia, are themſelves enſlaved. They are inceſſantly making conqueſts in the ſouth of Aſia, where they form empires; but that part of the

Book XVII. Chap. 5.

the nation which continues in the country, find that they are ſubject to a great maſter, who, being deſpotic in the ſouth, will likewiſe be ſo in the north, and exerciſing an arbitrary power over the vanquiſhed ſubjects, pretends to the ſame over the conquerors. This is at preſent moſt conſpicuous in that vaſt country called Chineſe Tartary, which is governed by the emperor with a power almoſt as deſpotic as that of China itſelf, and which he every day extends by his conqueſts.

We may likewiſe ſee in the hiſtory of China, that the emperors (d) ſent Chineſe colonies into Tartary. Theſe Chineſe are become Tartars, and the mortal enemies of China; but this does not prevent their carrying into Tartary the ſpirit of the Chineſe government.

(d) As Vouty V. emperor of the fifth Dynaſty.

A part of the Tartars who were conquerors, have very often been themſelves expelled; when they have carried into their deſarts that ſervile ſpirit, which they had acquired in the climate of ſlavery. The hiſtory of China furniſhes us with ſtrong proofs of this aſſertion, as does alſo our ancient * hiſtory.

From hence it proceeds that the genius of the Getic or Tartarian nation, has always reſembled that of the empires of Aſia. The people in theſe are governed by the cudgel; the inhabitants of Tartary by whips. The ſpirit of Europe has ever been contrary to theſe manners; and in all ages what the people of Aſia have called puniſhment,

* The Scythians thrice conquered Aſia, and thrice were driven from thence. Juſtin, l. 2.

thoſe

thoſe of Europe have deemed the moſt outrageous abuſe *. Book XVII. Chap. 5.

The Tartars who deſtroyed the Grecian empire, eſtabliſhed in the conquered countries, ſlavery and deſpotic power; the Goths, after ſubduing the Roman empire, founded monarchy and liberty.

I do not know whether the famous Rudbeck, who in his Atlantica has beſtowed ſuch praiſes on Scandinavia, has made mention of that great prerogative which ought to ſet this people above all the nations upon earth; namely, this country's having been the ſource of the liberties of Europe, that is, of almoſt all the freedom which at preſent ſubſiſts amongſt mankind.

Jornadez the Goth called the north of Europe, the forge (c) of the human race. I ſhould rather call it the forge, where thoſe weapons were framed, which broke the chains of ſouthern nations. In the north, were formed thoſe valiant people, who ſallied forth and deſerted their countries, to deſtroy tyrants and ſlaves, and to teach men that nature having made them equal, reaſon could not render them dependent, except where it was neceſſary to their happineſs.

(c) *Humani generis officinam.*

* This is no way contrary to what I ſhall ſay in the 28th book chap. 20. concerning the manner of thinking among the German nations, in reſpect to the cudgel; let the inſtrument be what it will, the power or action of beating was always conſidered by them as an affront.

CHAP.

CHAP. VI.

A new phyſical Cauſe of the Slavery of Aſia, and of the Liberty of Europe.

BOOK XVII. Chap. 6.

IN Aſia they have always had great empires; in Europe theſe could never ſubſiſt. Aſia has larger plains; it is cut out into much more extenſive diviſions by mountains and ſeas; and as it lies more to the ſouth, its ſprings are more eaſily dried up; the mountains are leſs covered with ſnow; and the rivers being not * ſo large, form more contracted barriers.

Power in Aſia ought then to be always deſpotic: for if their ſlavery was not ſevere, they would ſoon make a diviſion, inconſiſtent with the nature of the country.

In Europe the natural diviſion forms many nations of a moderate extent, in which the ruling by laws is not incompatible with the maintenance of the ſtate: on the contrary, it is ſo favourable to it, that without this, the ſtate would fall into decay, and become a prey to its neighbours.

It is this which has formed a genius for liberty, that renders every part extremely difficult to be ſubdued and ſubjected to a foreign power, otherwiſe than by the laws and the advantage of commerce.

On the contrary, there reigns in Aſia a ſervile ſpirit, which they have never been able to ſhake off: and it is impoſſible to find, in all the hiſtories of that country, a ſingle paſſage which diſcovers a

* The waters loſe themſelves, or evaporate before or after their ſtreams are united.

freedom

freedom of ſpirit: we ſhall never ſee any thing there but the exceſs of ſlavery.

CHAP. VII.

Of Africa and America.

THIS is what I had to ſay of Aſia and Europe. Africa is in a climate like that of the ſouth of Aſia, and is in the ſame ſervitude. America * being lately deſtroyed and re-peopled by the nations of Europe and Africa, can now ſcarcely diſplay its genuine ſpirit; but what we know of its ancient hiſtory is very conformable to our principles.

CHAP. VIII.

Of the Capital of the Empire.

ONE of the conſequences of what we have been mentioning, is, that it is of the utmoſt importance to a great prince to make a proper choice of the ſeat of his empire. He who places it to the ſouthward, will be in danger of loſing the north; but he who fixes it on the north, may eaſily preſerve the ſouth. I do not ſpeak of particular caſes. In mechanics there are frictions by which the effects of the theory are frequently changed or retarded; and policy hath alſo its frictions.

* The petty barbarous nations of America are called by the Spaniards *Indios Bravos*, and are much more difficult to ſubdue than the great empires of Mexico and Peru.

BOOK XVIII.

Of Laws in the Relation they bear to the Nature of the Soil.

CHAP. I.

How the Nature of the Soil has an Influence on the Laws.

Book XVIII. Chap. 1.

THE goodneſs of the land, in any country, naturally eſtabliſhes ſubjection and dependance. The huſbandmen, who compoſe the principal part of the people, are not very jealous of their liberty; they are too buſy and too intent on their own private affairs. A country which overflows with wealth, is afraid of pillage, afraid of an army. "Who is there that forms this goodly party? ſaid Cicero to Atticus (a), are "they the men of commerce and huſbandry? "Let us not imagine that theſe are averſe to "monarchy, theſe to whom all governments are "equal, as ſoon as they beſtow tranquillity."

(a) Lib. 17.

Thus monarchy is more frequently found in fruitful countries, and a republican government in thoſe which are not ſo; and this is ſometimes a ſufficient compenſation for the inconveniences they ſuffer by the ſterility of the land.

The barrenneſs of the Attic ſoil eſtabliſhed there a democracy; and the fertility of that of Lacedæmonia an ariſtocratical conſtitution. For in

in thoſe times, Greece was averſe to the government of a ſingle perſon; and ariſtocracy had the neareſt reſemblance to that government. Book XVIII. Chap. 2.

Plutarch ſays (b), that the Cilonian ſedition having been appeaſed at Athens, the city fell into its ancient diſſenſions, and was divided into as many parties as there were kinds of land in Attica. The men who inhabited the eminences, would by all means have a popular government; thoſe of the flat open country, demanded a government compoſed of the chiefs; and they who were near the ſea, deſired a mixture of both.

(b) Life of Solon.

CHAP. II.

The ſame Subject continued.

THESE fertile provinces are always of a level ſurface, where the inhabitants are unable to diſpute againſt a ſtronger power: they are then obliged to ſubmit; and when they have once ſubmitted, the ſpirit of liberty cannot return; the wealth of the country is a pledge of their fidelity. But in mountainous diſtricts, as they have but little, they may preſerve what they have. The liberty they enjoy, or in other words, the government they are under, is the only bleſſing worthy of their defence. It reigns therefore more in mountainous and rugged countries, than in thoſe which nature ſeems to have moſt favoured.

The mountaineers preſerve a more moderate government; becauſe they are not ſo liable to be conquered. They defend themſelves eaſily, and are attacked with difficulty; ammunition and proviſions are collected and carried againſt them with

great expence, for the country furniſhes none. It is then a more arduous, a more dangerous enterprize, to make war againſt them; and all the laws that can be enacted for the ſafety of the people are there of leaſt uſe.

CHAP. III.

What Countries are beſt cultivated.

COUNTRIES are not cultivated in proportion to their fertility, but to their liberty; and if we make an imaginary diviſion of the earth, we ſhall be aſtoniſhed to ſee in moſt ages, deſerts in the moſt fruitful parts, and great nations in thoſe, where nature ſeems to refuſe every thing.

It is natural for a people to leave a bad ſoil to ſeek a better; and not to leave a good ſoil to go in ſearch of worſe. Moſt invaſions have therefore been made in countries, which nature ſeems to have formed for happineſs: and as nothing is more nearly allied than deſolation and invaſion, the beſt provinces are moſt frequently depopulated; while the frightful countries of the north continue always inhabited, from their being almoſt uninhabitable.

We find by what hiſtorians tells us of the paſſage of the people of Scandinavia, along the banks of the Danube, that this was not a conqueſt, but only a migration into deſert countries.

Theſe happy climates muſt therefore have been depopulated by other migrations, though we know not the tragical ſcenes that happened.

"It appears by many monuments of antiquity, says Ariſtotle (c), that the Sardinians were a Grecian colony. They were formerly very rich; and Ariſteus, ſo famed for his love of agriculture, was their law-giver. But they are ſince fallen to decay; for the Carthaginians becoming their maſters, deſtroyed every thing proper for the nouriſhment of man, and forbad the cultivation of the lands on pain of death." Sardinia was not recovered in the time of Ariſtole, nor is it to this day. BOOK XVIII. Chap. 4.

(c) Or he who wrote the book *De Mirabilibus.*

The moſt temperate parts of Perſia, Turky, Muſcovy, and Poland, have not been able to recover perfectly from the devaſtations of the Tartars.

CHAP. IV.

New Effects of the Fertility and Barrenneſs of Countries.

THE barrenneſs of the earth renders men induſtrious, ſober, inured to hardſhip, courageous, and fit for war; they are obliged to procure by labour what the earth refuſes to beſtow ſpontaneouſly. The fertility of a country gives eaſe, effeminacy, and a certain fondneſs for the preſervation of life. It has been remarked that the German troops raiſed in thoſe places where the peaſants are rich, as for inſtance, in Saxony, are not ſo good as the others. Military laws may provide againſt this inconvenience by a more ſevere diſcipline.

CHAP. V.

Of the Inhabiants of Iſlands.

Book XVIII. Chap. 5, and 6.

THE inhabitants of iſlands have a higher reliſh for liberty than thoſe of the continent. Iſlands are commonly of a ſmall * extent; one part of the people cannot be ſo eaſily employed to oppreſs the other; the ſea ſeparates them from great empires; tyranny cannot ſo well ſupport itſelf within a ſmall compaſs; conquerors are ſtopped by the ſea; and the iſlanders being without the reach of their arms, more eaſily preſerve their own laws.

CHAP. VI.

Of Countries raiſed by the Induſtry of Man.

THOSE countries which the induſtry of man has rendered habitable, and which ſtand in need of the ſame induſtry to provide for their ſubſiſtence, require a mild and moderate government. There are principally three of this ſpecies, the two fine provinces of Kiang-nan and Tcekiang in China, Ægypt, and Holland.

The ancient emperors of China were not conquerors. The firſt thing they did to aggrandize themſelves, was what gave the higheſt proof of their wiſdom. They raiſed from beneath the waters two of the fineſt provinces of the empire; theſe owe their exiſtence to the labour of man. And it is the inexpreſſible fertility of theſe two provinces, which has given Europe ſuch ideas of the felicity

* Japan is an exception to this, by its great extent as well as by its ſlavery.

of that vaſt country. But a continual and neceſſary care to preſerve from deſtruction ſo conſiderable a part of the empire, demanded rather the manners of a wife, than of a voluptuous nation; rather the lawful authority of a monarch, than the tyrannic ſway of a deſpotic prince. Power was therefore neceſſarily moderated in that country, as it was formerly in Ægypt, and as it is now in Holland, which nature has made to attend to herſelf, and not to be abandoned to negligence or caprice.

Thus in ſpite of the climate of China, where they are naturally led to a ſervile obedience, in ſpite of the apprehenſions which follow too great an extent of empire, the firſt legiſlators of this country were obliged to make excellent laws, and the government was frequently obliged to follow them.

CHAP. VII.

Of human Induſtry.

MAnkind by their induſtry, and by the influence of good laws, have rendered the earth more proper for their abode. We ſee rivers flow where there have been lakes and marſhes: this is a benefit which nature has not beſtowed; but it is a benefit maintained and ſupplied by nature. When the Perſians (d) were maſters of Aſia, they permitted thoſe who conveyed a ſpring to any place, which had not been watered before, to enjoy the benefit for five generations; and as a number of rivulets flowed from mount Taurus, they ſpared no expence in directing the courſe of

(d) Polybius, l. 10.

BOOK XVIII. Ch. 8, & 9.

their ſtreams. At this day, without knowing how they came thither, they are found in the fields and gardens.

Thus as deſtructive nations produce evils more durable than themſelves; the actions of an induſtrious people are the ſource of bleſſings which laſt when they are no more.

CHAP. VIII.

The general Relation of Laws.

THE laws have a very great relation to the manner, in which the ſeveral nations procure their ſubſiſtence. There ſhould be a code of laws of a much larger extent, for a nation attached to trade and navigation, than for people who are content with cultivating the earth. There ſhould be a much greater for the latter, than for thoſe who ſubſiſt by their flocks and herds. There muſt be a ſtill greater for theſe, than for ſuch as live by hunting.

CHAP. IX.

Of the Soil of America.

THE cauſe of there being ſuch a number of ſavage nations in America, is the fertility of the earth, which ſpontaneouſly produces many fruits capable of affording them nouriſhment. If the women cultivate a ſpot of land round their cottages, the maiz grows up preſently; and hunting and fiſhing puts the men in a ſtate of complete abundance. Beſides, black cattle, as cows, buffaloes, &c. thrive there better than carnivorous beaſts,

beasts. The latter have always reigned in Africa.

We should not, I believe, have all these advantages in Europe, if the land was left uncultivated; it would scarce produce any thing besides forests of oaks and other barren trees.

CHAP. X.

Of population in the relation it bears to the manner of procuring Subsistence.

LET us see in what proportion countries are peopled, where the inhabitants do not cultivate the earth. As the produce of uncultivated land, is to that of land improved by culture; so the number of savages in one country, is to that of husbandmen in another: and when the people who cultivate the land, cultivate also the arts, this is also in such proportions as would require a minute detail.

They can scarcely form a great nation. If they are herdsmen and shepherds, they have need of an extensive country to furnish subsistence for a small number; if they live by hunting, their number must be still less, and in order to find the means of life, they must constitute a very small nation.

Their country commonly abounds with forests; which, as the inhabitants have not the art of draining off the waters, are filled with bogs; here each troop canton themselves, and form a petty nation.

CHAP. XI.

Of ſavage and barbarous Nations.

Book XVIII. Chap. 11, and 12.

THERE is this difference between ſavage and barbarous nations; the former are diſperſed clans, which for ſome particular reaſon, cannot be joined in a body; and the latter are commonly ſmall nations, capable of being united. The ſavages are generally hunters; the barbarians are herdſmen and ſhepherds.

This appears plain in the north of Aſia. The people of Siberia cannot live in bodies, becauſe they are unable to find ſubſiſtence; the Tartars may live in bodies for ſome time, becauſe their herds and flocks may, for a time, be re-aſſembled. All the clans may then be re-united, and this is effected when one chief has ſubdued many others; after which they may do two things, either ſeparate, or ſet out with a deſign to make a great conqueſt in ſome ſouthern empire.

CHAP. XII.

Of the Law of Nations amongſt People who do not cultivate the Earth.

AS theſe people do not live in circumſcribed territories, many cauſes of ſtrife ariſe between them; they quarrel about waſte land, as we about inheritances. Thus they find frequent occaſions for war, in diſputes relative either to their hunting, their fiſhing, the paſture for their cattle, or the violent ſeizing of their ſlaves; and as they are not poſſeſſed of landed property, they have many things

things to regulate by the law of nations, and but few to decide by the civil law.

CHAP. XIII.

Of the civil Laws of thoſe nations who do not cultivate the Earth.

THE diviſion of lands is what principally increaſes the civil code. Amongſt nations where they have not made this diviſion, there are very few civil laws.

The inſtitutions of theſe people may be called *manners* rather than *laws*.

Amongſt ſuch nations as theſe, the old men, who remember things paſt, have great authority; they cannot there be diſtinguiſhed by wealth, but by wiſdom and valour.

Theſe people wander and diſperſe themſelves in paſture grounds or in foreſts. Marriage cannot there have the ſecurity which it has amongſt us, where it is fixed by the habitation, and where the wife continues in one houſe; they may then more eaſily change their wives, poſſeſs many, and ſometimes mix indifferently like brutes.

Nations of herdſmen and ſhepherds cannot leave their cattle, which are their ſubſiſtence; neither can they ſeparate themſelves from their wives, who look after them. All this ought then to go together, eſpecially as living generally in a flat open country where there are few places of conſiderable ſtrength, their wives, their children, their flocks, may become the prey of their enemies.

Their

Their laws regulate the diviſion of plunder, and have, like our Salic laws, a particular attention to theft.

CHAP. XIV.

Of the political State of the people who do not cultivate the Land.

THESE people enjoy great liberty. For as they do not cultivate the earth, they are not fixed, they are wanderers and vagabonds; and if a chief ſhould deprive them of their liberty, they would immediately go and ſeek it under another, or retire into the woods, and there live with their families. The liberty of the man is ſo great among theſe people, that it neceſſarily draws after it that of the citizen.

CHAP. XV.

Of People who know the Uſe of Money.

ARISTIPPUS being caſt away, ſwam and got ſafe to the next ſhore; where beholding geometrical figures traced in the ſand, he was ſeized with a tranſport of joy, judging that he was amongſt Greeks, and not in a nation of barbarians.

Should you ever happen to be caſt by ſome adventure amongſt an unknown people; upon ſeeing a piece of money, you may be aſſured, that you are arrived in a civilized country.

The culture of lands requires the uſe of money. This culture ſuppoſes many inventions and many degrees of knowledge; and we always ſee ingenuity, the

the arts, and a ſenſe of want, making their p
with an equal pace. All this conduces to the
bliſhment of a ſign of value.

Torrents and eruptions * have made the diſco
very that metals are contained in the bowels of
the earth. When once they have been ſeparated,
they have eaſily been applied to their proper uſe.

CHAP. XVI.

Of civil Laws amongſt People who know not the Uſe of Money.

WHEN a people have not the uſe of money, they are ſeldom acquainted with any other injuſtice than that which ariſes from violence; and the weak, by uniting, defend themſelves from its effects. They have nothing there but political regulations. But where money is eſtabliſhed, they are ſubject to that injuſtice which proceeds from craft; an injuſtice that may be exerciſed a thouſand ways. Hence they are forced to have good civil laws, which ſpring up with the new practiſes of iniquity.

In countries where they have no ſpecie, the robber takes only bare moveables, which have no mutual reſemblance. But where they make uſe of money, the robber takes the ſigns, and theſe always reſemble each other. In the former nothing can be concealed, becauſe the robber takes along with him the proofs of his conviction; but in the latter, it is quite the contrary.

* It is thus that Diodorus tells us the ſhepherds found gold in the Pyrenean mountains.

CHAP.

CHAP. XVII.

Of political Laws amongſt Nations who have not the Uſe of Money.

Book XVIII. Chap. 17. and 18.

THE greateſt ſecurity of the liberties of a people who do not cultivate the earth, is their not knowing the uſe of money. What is gained by hunting, fiſhing, or keeping herds of cattle, cannot be aſſembled in ſuch great quantity, nor be ſufficiently preſerved, for one man to find himſelf in a condition to corrupt many others: but when, inſtead of this, a man has a ſign of riches, he may obtain a large quantity of theſe ſigns, and diſtribute them as he pleaſes.

The people who have no money, have but few wants; and theſe are ſupplied with eaſe, and in an equal manner. Equality is then unavoidable; and from hence it proceeds, that their chiefs are not deſpotic.

CHAP. XVIII.

Of the Power of Superſtition.

IF what travellers tell us be true, the conſtitution of a nation of Louiſiana, called the Natches, is an exception to this. Their (c) chief diſpoſes of the goods of all his ſubjects, and obliges them to work and toil, according to his pleaſure. He has a power like that of the grand ſignior, and they cannot even refuſe him their heads. When the preſumptive heir enters into the world, they devote all the ſucking children to his ſervice

(c) Edifying Letters, 20th collection.

vice during his life. One would imagine that this is the great Seſoſtris. He is treated in his cottage, with as much ceremony as an emperor of Japan or China. BOOK XVIII. Chap. 19.

The prejudices of ſuperſtition are ſuperior to all others, and have the ſtrongeſt influence on the human mind. Thus, though the ſavage nations have naturally no knowledge of deſpotic tyranny, ſtill they feel the weight of it. They adore the ſun; and if their chief had not imagined that he was the brother of this glorious luminary, they would have thought him a wretch like themſelves.

CHAP. XIX.

Of the Liberty of the Arabs, and the Servitude of the Tartars.

THE Arabs and Tartars are nations of herdſmen and ſhepherds. The Arabs find themſelves in that ſituation, of which we have been ſpeaking, and are therefore free: whilſt the Tartars (the moſt ſingular people on earth) are involved in a * political ſlavery. I have already given reaſons (f) for this, and ſhall now aſſign ſome others. (f) Book XVII. c. 5.

They have no towns, no foreſts, and but few marſhes; their rivers are generally frozen, and they dwell in a level country of an immenſe extent. They have paſture for their herds and flocks, and conſequently property; but they have no kind of retreat, or place of ſafety. A Khan is no ſooner overcome

* When a Khan is proclaimed, all the people cry, That his word ſhall be as a ſword.

than

Book XVIII. Chap. 19.

than they cut off his * head; his children are treated in the ſame manner, and all his ſubjects belong to the conqueror. Theſe are not condemned to a civil ſlavery; for in that caſe they would be a burthen to a ſimple people, who have no lands to cultivate, and no need of any domeſtic ſervice. They therefore add to the bulk of the nation; but inſtead of civil ſervitude, a political ſlavery muſt naturally be introduced amongſt them.

It is apparent, that in a country where the ſeveral clans make continual war, and are perpetually conquering each other; in a country, where by the death of the chief, the body politic of the vanquiſhed clan is always deſtroyed, the nation in general can enjoy but little freedom: for there is not a ſingle party that muſt not have been often ſubdued.

A conquered people may preſerve ſome degree of liberty, when by the ſtrength of their ſituation, they are in a ſtate, that will admit of capitulating after their defeat. But the Tartars always defenceleſs, being once overcome, can never be able to obtain conditions.

I have ſaid in Chap. II. that the inhabitants of cultivated plains are ſeldom free. Circumſtances have concurred to put the Tartars who dwell in uncultivated plains, in the ſame ſituation.

* We ought not therefore to be aſtoniſhed at Mahomet the ſon of Miriveis, who, upon taking Iſpahan, put all the princes of the blood to the ſword.

CHAP.

CHAP. XX.

Of the LAW OF NATIONS *as practiſed by the Tartars.*

THE Tartars appear to be mild and humane amongſt themſelves; and yet they are moſt cruel conquerors: when they take cities, they put the inhabitants to the ſword, and imagine that they act humanely, if they only ſell the people, or diſtribute them amongſt their ſoldiers. They have deſtroyed Aſia, from India, even to the Mediterranean; and all the country which forms the eaſt of Perſia, they have rendered a deſert. BOOK XVIII. Chap. 20. and 21.

This law of nations is owing, I think, to the following cauſe. Theſe people having no towns, all their wars are carried on with eagerneſs and impetuoſity. They fight whenever they hope to conquer; and when they have no ſuch hope, they join the ſtronger army. With ſuch cuſtoms, it is contrary to their law of nations, that a city incapable of repelling their attack, ſhould ſtop their progreſs. They regard not cities as an aſſociation of inhabitants, but as places made to bid defiance to their power. They beſiege them without military ſkill, and expoſe themſelves greatly in the attack; and therefore revenge themſelves on all thoſe who have ſpilt their blood.

CHAP. XXI.

The CIVIL LAW *of the Tartars.*

FATHER Du Halde ſays, that amongſt the Tartars the youngeſt of the males is always

the heir, by reaſon that as ſoon as the elder brothers are capable of leading a paſtoral life, they leave the houſe with a certain number of cattle given them by their father, and build a new habitation. The laſt of the males who continues at home with the father, is then his natural heir.

I have heard that a like cuſtom was alſo obſerved in ſome ſmall diſtricts of England: and we find it ſtill in Brittany, in the dutchy of Rohan, where it obtains with regard to ignoble tenures. This is doubtleſs a paſtoral law conveyed thither by ſome of the people of Britain, or eſtabliſhed by ſome German nation. By Cæſar and Tacitus we are informed, that the latter cultivated but little land.

CHAP. XXII.

Of a CIVIL LAW *of the German Nations.*

I Shall here explain how that particular paſſage of the Salic law, which is commonly diſtinguiſhed by the term *The Salic Law*, relates to the inſtitutions of a people who do not cultivate the earth, or at leaſt who cultivate it but very little.

(s) Tit. 62. The Salic (s) law ordains, that when a man has left children behind him, the males ſhall ſucceed to the Salic land in prejudice to the females.

To underſtand the nature of thoſe Salic lands, there needs no more than to ſearch into the uſages or cuſtoms of the Franks with regard to lands, before they left Germany.

Mr. Echard has very plainly proved, that the word *Salic* is derived from *Sala*, which ſignifies a houſe; and, therefore, that the Salic land was the land

land belonging to the houſe. I ſhall proceed farther, and examine into the nature of the houſe, and of the land belonging to the houſe, among the Germans. BOOK XVIII. Chap. 22.

"They dwell not in towns, ſays * Tacitus, nor "can they bear to have their habitations contiguous "to thoſe of others; every one leaves a ſpace or "ſmall piece of ground about his houſe, which is "incloſed." Tacitus is very exact in this account; for many laws of the (h) Barbarian codes have different decrees againſt thoſe who threw down this incloſure, as well as againſt ſuch as broke into the houſe.

(h) The law of the Alemans, c. 10. and the law of the Bavarians, tit. 10. §. 1, and 2.

We learn from Tacitus and Cæſar, that the lands cultivated by the Germans, were given them only for the ſpace of a year; after which they again became public. They had no other patrimony but the houſe and a piece of land, within the † incloſure that ſurrounded it. It was this particular patrimony which belonged to the males. And indeed how could it belong to the daughters? they were to paſs into another habitation.

The Salic land was then within that incloſure, which belonged to a German houſe; this was the only property they had. The Franks, after their conqueſts, acquired new poſſeſſions, and continued to call them Salic lands.

When the Franks lived in Germany, their wealth conſiſted of ſlaves, flocks, horſes, arms, &c. The habitation and the ſmall portion of land adjoining to

* *Nullas Germanorum populis urbes habitari ſatis notum eſt, ne pati quidem inter ſe junctas ſedes; colunt diſcreti, ut nemus placuit. Vicos locant, non in noſtrum morem connexis & cohærentibus ædificiis: ſuam quiſque domum ſpatio circumdat.* De moribus Germanorum.

† This incloſure is called *Certis*, in the charters.

Book XVIII. Chap. 22.

it, were naturally given to the male children who were to dwell there. But afterwards, when the Franks had by conqueſt acquired large tracts of land, they thought it hard, that the daughters and their children ſhould be incapable of enjoying any part of them. Hence it was that they introduced a cuſtom of permitting the father to ſettle the eſtate after his death upon his daughter, and her children. They ſilenced the law; and it appears that theſe ſettlements were frequent, ſince they were entered in the formularies (i).

(i) See Marculfus, l. 2. form. 10, & 12. Append. to Marculf. form. 49. and the ancient formularies of *Sirmondus* form. 22.

Amongſt theſe formularies I find one (k) of a ſingular nature. A grandfather ordained by will, that his grand-children ſhould ſhare the inheritance with his ſons and daughters. What then became of the Salic law? In thoſe times either it could not be obſerved, or the continual uſe of nominating the daughters to an inheritance, had made them conſider their ability to ſucceed, as a caſe authorized by cuſtom.

(k) Form. 55. in Lindembrock's collection.

The Salic law had not in view a preference of one ſex to the other, much leſs had it a regard to the perpetuity of a family, a name, or the tranſmiſſion of land. Theſe things did not enter into the heads of the Germans; it was purely an œconomical law, which gave the houſe and the land dependent thereon, to the males who ſhould dwell in it, and to whom it conſequently was of moſt ſervice.

We need here only tranſcribe the title of the *Allodial lands* of the Salic law, that famous text of which ſo many have talked, and which ſo few have read.

"If a man dies without iſſue, his father or "mother ſhall ſucceed him. 2. If he has neither

" father nor mother, his brother or ſiſter ſhall ſucceed him. 3. If he has neither brother nor ſiſter, the ſiſter of his mother ſhall ſucceed him. 4. If his mother has no ſiſter, the ſiſter of his father ſhall ſucceed him. 5. If his father has no ſiſter, the neareſt relation by the male ſide ſhall ſucceed. 6. Not * any part of the Salic land ſhall paſs to the females; but it ſhall belong to the males, that is, the male children ſhall ſucceed their father." Book XVIII. Chap. 22.

It is plain that the firſt five articles relate to the inheritance of a man who dies without iſſue; and the ſixth, to the ſucceſſion of him who has children.

When a man dies without children, the law ordains that neither of the two ſexes ſhall have the preference to the other, except in certain caſes. In the two firſt degrees of ſucceſſion, the advantages of the males and females were the ſame; in the third and fourth, the females had the preference; and the males in the fifth.

Tacitus points out the ſource of theſe extravagances: " The ſiſter's † children, ſays he, are " as dear to their uncle as to their own father. " There are men who regard this degree of kin- " dred as more ſtrict, and even more holy. " They prefer it when they receive hoſtages."

* *De terrâ verò Salicâ in mulierem nulla portio hereditatis tranſit, ſed hoc virilis ſexus acquirit, hoc eſt filii in ipsâ hereditate ſuccedunt.* Tit. 62. §. 6.

† *Sororum filiis idem apud avunculum quam apud patrem honor. Quidam ſanctiorem arctioremque hunc nexum ſanguinis arbitrantur, & in accipiendis obſidibus magis exigunt, tanquam ii & animum firmius & domum latius teneant.* De morib. Germanorum.

Book XVIII. Chap. 22.

From hence it proceeds that our earlieſt * hiſtorians ſpeak in ſuch ſtrong terms of the love of the kings of the Franks for their ſiſters, and their ſiſters children. And indeed if the children of the ſiſter were conſidered in her brother's houſe, as his own children, it was natural for theſe to regard their aunt as their mother.

The ſiſter of the mother was preferred to the father's ſiſter; this is explained by other texts of the Salic law. When a (l) woman became a widow, ſhe fell under the guardianſhip of her huſband's relations; the law preferred to this guardianſhip the relations by the females before thoſe by the males. Indeed a woman who entered into a family, joining herſelf with thoſe of her own ſex, became more united to her relations by the female than by the male. Moreover, when (m) a man killed another, and had not wherewithal to pay the pecuniary penalty, the law permitted him to deliver up his ſubſtance, and his relations were to ſupply the deficience. After the father, mother, and brother, the ſiſter of the mother was to pay, as if this tie had ſomething in it moſt tender: Now the degree of kindred which impoſes the burthens, ought alſo to confer the advantages.

(l) Salic law, tit. 47.

(m) Ibid. tit. 61. §. 1.

The Salic law enjoins, that after the father's ſiſter, the ſucceſſion ſhould be held by the neareſt relation male; but if this relation was beyond the fifth degree, he ſhould not inherit. Thus a female of

* See in Gregory of Tours, lib. 8. c. 18. and 20. and lib 9. c. 16, and 20. the rage of Gontram at Leovigild's ill treatment of Ingunda his niece, which Childebert her brother took up arms to revenge.

the

the fifth degree, might inherit to the prejudice of a male of the ſixth: and this may be ſeen in the * law of the Ripuarian Franks, (a faithful interpreter of the Salic law) under the title of *Allodial Lands*, where it cloſely adheres to the Salic law on the ſame ſubject.

If the father left iſſue, the Salic law would have the daughters excluded from the inheritance of the Salic land, and determined that it ſhould belong to the male children.

It would be eaſy for me to prove that the Salic law did not abſolutely exclude the daughters from the poſſeſſion of the Salic land, but only in the caſe where they were debarred by their brothers. This appears from the letter of the Salic law; which after having ſaid, that the women ſhall poſſeſs none of the Salic land, but only the males, interprets and reſtrains itſelf, by adding, "that is, the ſon ſhall ſucceed "to the inheritance of the father."

2. The text of the Salic law is cleared up by the law of the Ripuarian Franks, which has alſo a title (a) on allodial lands very conformable to that of the Salic law.

(a) 56.

3. The laws of theſe barbarous nations, who all ſprung from Germany, interpret each other, more particularly as they all have nearly the ſame ſpirit. The Saxon † law enjoined the father and mother to leave their inheritance to their ſon, and not to their daughter; but if there were none but daughters, they were to have the whole inheritance.

* *Et deinceps uſque ad quintum genuculum qui proximus fuerit in hereditatem ſuccedat.* Tit. 56. § 3.

† Tit. 7. § 1. *Pater aut mater defuncti, filio non filiæ hereditatem relinquant*; § 4. *qui defunctus, non filios, ſed filias reliquerit, ad eas omnis hereditas pertineat.*

BOOK XVIII. Chap. 22.

4. We have two ancient formularies (o) that ſtate the caſe, in which according to the Salic law the daughters were excluded by the males, that is, when they ſtood in competition with their brother.

(o) In Marculfus, l. 2. form. 12. and in the Appendix to Marculfus, form. 49.

5. Another formulary (p) proves, that the daughter ſucceeded to the prejudice of the grandſon; ſhe was therefore excluded only by the ſon.

(p) Lindembroch's collection form. 55.

6. If daughters had been generally debarred by the Salic law from the inheritance of land, it would be impoſſible to explain the hiſtories, formularies, and charters, which are continually mentioning the lands and poſſeſſions of the females, under the firſt race.

(q) Ducange, Pithou, &c.

People (q) have been wrong in aſſerting, that the Salic lands were fiefs. 1. This head is diſtinguiſhed by the title of allodial lands. 2. Fiefs at firſt were not hereditary. 3. If the Salic lands had been fiefs, how could Marculfus treat that cuſtom as impious which excluded the women from inheriting, when the males themſelves did not ſucceed to fiefs? 4. The charters which have been cited to prove that the Salic lands were fiefs, only ſhew that they were freeholds. 5. Fiefs were not eſtabliſhed till after the conqueſt, and the Salic cuſtoms exiſted long before the Franks left Germany. 6. It was not the Salic law that formed the eſtabliſhment of fiefs, by ſetting bounds to the ſucceſſion of females; but it was the eſtabliſhment of fiefs that preſcribed limits to the ſucceſſion of females, and to the regulations of the Salic law.

After what has been ſaid, one would not imagine that the perpetual ſucceſſion of males to the crown of France ſhould have taken its riſe from the Salic law.

law. And yet this is a point indubitably certain. I prove it from the ſeveral codes of the barbarous nations. The Salic law (r) and the law of the Burgundians (s) debarred the daughters from the right of ſucceeding to the land in conjunction with their brothers; neither did they ſucceed to the crown. The law of the (t) Viſigoths, on the contrary *, permitted the daughters to inherit the land with the brothers: and the women were † capable of inheriting the crown. Amongſt theſe people the regulations of the civil law had an effect on the political.

BOOK XVIII. Chap. 22.

(r) Tit. 62.
(s) Tit. 1. § 3. tit. 14. § 1. & tit. 51.
(t) Lib. 4. tit. 2. § 1.

This was not the only caſe in which the political law of the Franks gave way to the civil. By the Salic law, all the brothers ſucceeded equally to the land, and this was alſo decreed by a law of the Burgundians. Thus, in the kingdom of the Franks, and in that of the Burgundians, all the brothers ſucceeded to the crown; if we except a few murders and uſurpations, which took place amongſt the Burgundians.

* Among the Oſtrogoths, the crown twice devolved to the males by means of females; the firſt time to Athalaricus through Amalaſuntha, and the ſecond to Theodat, through Amalaſreda. Not but that the females of that nation might have held the crown in their own right; for Amalaſuntha reigned after the death of Athalaricus; nay, even after the election of Theodat, and in conjunction with that prince. See Amalaſuntha's and Theodat's letters in Caſſiodorus, lib. 10.

† The German nations, ſays Tacitus, had common cuſtoms, as well as thoſe which were peculiar to each.

CHAP. XXIII.

Of the regal Ornaments among the Franks.

Book XVIII. Chap. 23, and 24.

A PEOPLE who do not cultivate the land, have no idea of luxury. We may ſee in Tacitus the admirable ſimplicity of the German nations; they had no artificial elegances of dreſs; their ornaments were derived from nature. If the family of their chief was to be diſtinguiſhed by any ſign, it was no other than that which nature beſtowed. The kings of the Franks, of the Burgundians, and the Viſigoths, wore their long hair for a diadem.

CHAP. XXIV.

Of the Marriages of the Kings of the Franks.

I HAVE already mentioned, that with people who do not cultivate the earth, marriages are leſs fixed than with others, and that they generally take many wives. "Of * all the barbarous nations the Germans were almoſt the only people "who were ſatisfied with one wife, if we except †, ſays Tacitus, ſome perſons, who not "from a diſſoluteneſs of manners, but becauſe of "their nobility, had many."

This explains the reaſon why the kings of the firſt race, had ſo great a number of wives. Theſe marriages were leſs a proof of incontinence, than

* *Prope ſoli Barbarorum ſingulis uxoribus contenti ſunt.* De morib. Germanorum.

† *Exceptis admodum paucis qui non libidine, ſed ob nobilitatem, plurimis nuptiis ambiuntur.* Ibid.

a con-

a conſequence of dignity: and it would have wounded them in a tender point to have deprived them of ſuch a prerogative (u). This alſo explains the reaſon why the example of the kings was not followed by the ſubjects.

BOOK XVIII. Chap. 25, and 26.

(u) See Fredegarius's chronicle of the year 628.

CHAP. XXV.

CHILDERIC.

"THE laws of matrimony amongſt the Germans, ſays Tacitus, are ſtrictly obſerved *. "Vice is not there a ſubject of ridicule. To corrupt or be corrupted is not called faſhion, or "the cuſtom of the age: there are few † examples in this populous nation of the violation "of conjugal faith."

This was the reaſon of the expulſion of Childeric: he ſhocked their rigid virtue, which conqueſt had not had time to corrupt.

CHAP. XXVI.

Of the Time when the Kings of the Franks became of Age.

BARBARIANS who do not cultivate the earth, have, ſtrictly ſpeaking, no juriſdiction; and are, as we have already remembered, rather governed by the law of nations, than by civil inſtitutions. They are therefore always armed. Thus Taci-

* *Severa matrimonia——nemo illic vitia ridet, nec corrumpere & corrumpi ſæculum vocatur.* De moribus Germanorum.

† *Pauciſſima in tam numeroſâ gente adulteria.* Ibid.

tus

Book XVIII. Chap. 26.

tus tells us, "that the Germans * undertook no affairs either of a public or private nature, unarmed." They gave their † vote by the sound of their arms ‡. As soon as they could carry them, they were presented to the assembly; they put a javelin ‖ into their hands; and from that moment they § were out of their minority: they had been a part of the family, now they became a part of the republic.

"The eagles, said (x) the king of the Ostrogoths, cease to feed their young ones, as soon as their wings and talons are formed; the latter have no need of assistance, when they are able themselves to seize their prey: it would be a disgrace, if the young people in our armies were thought to be of an age unfit for managing their estates, or regulating the conduct of their lives. It is virtue that constitutes full age among the Goths."

(x) Theodoric in Cassiod. lib. 1. ep. 38.

Childebert II. was †† fifteen years old, when Gontram, his uncle declared that he was of age, and capable of governing by himself. We find in the Ripuarian laws, that the age of fifteen, the ability of bearing arms, and majority went together.

* *Nihil neque publicæ neque privatæ rei nisi armati agunt.* Ibid.

† *Si displicuit sententia, fremitu aspernantur; sin placuit, framcas concutiunt.* Ibid.

‡ *Sed arma sumere non ante cuiquam moris, quàm civitas sufficientem probaverit.*

‖ *Tum in ipso concilio vel principum aliquis, vel pater, vel propinquus, scuto, framcâque juvenem ornant.*

§ *Hæc apud illos toga, hic primus juventæ honos; ante hoc domûs pars videntur, mox reipublicæ.*

†† He was scarcely five years old, says Gregory of Tours, l. 5. c. 1. when he succeeded to his father in the year 575. Gontram declared him of age in the year 585, he was therefore at that time no more than fifteen.

together. It is there said (y) "that if a Ripua-
"rian dies, or is killed, and leaves a son behind
"him, that son can neither prosecute, nor be
"prosecuted, till he has completely attained the
"age of fifteen; and then he may either an-
"swer for himself, or chuse a champion." It was necessary that his mind should be sufficiently formed to be able to defend himself in court; and that his body should have all the strength that was proper for his defence in single combat. Amongst the Burgundians (z), who also made use of this combat in their judiciary proceedings, they were of age at fifteen.

(y) Tit. 81.

(z) Tit. 87.

Agathias tells us, that the arms of the Franks were light: they might therefore be of age at fifteen. In succeeding times the arms they made use of were heavy, and they were already greatly so in the time of Charlemain, as appears by our capitularies and romances. Those who had * fiefs, and were consequently obliged to do military service, were not then of age, till they were twenty-one years old †.

CHAP. XXVII.

The same Subject continued.

WE have seen that the Germans did not appear in their assemblies, before they were of age; they were a part of the family, but not of the republic. This was the reason that the chil-

* There was no change in the time with regard to the common people.

† St. Lewis was not of age till twenty-one; this was altered by an edict of Charles V. in the year 1374.

dren

Book XVIII. Chap. 27.

children of Clodomir king of Orleans, and conqueror of Burgundy, were not proclaimed kings, becauſe they were of too tender an age to be preſent at the aſſembly. They were not yet kings, but they had a right to the regal dignity as ſoon as they were able to bear arms; and in the mean time, Clotildis their grand-mother governed the ſtate *. But their uncles Clotarius and Childebert aſſaſſinated them, and divided their kingdom. This was the cauſe that in the following ages, princes in their minority were proclaimed kings immediately after the death of their fathers. Thus duke Gondovald ſaved Childebert II. from the cruelty of Chilperic, and cauſed him to be proclaimed king †, when he was only five years old.

But even in this change they followed the original ſpirit of the nation; for the public acts did not paſs in the name of the young monarch. So that the Franks had a double adminiſtration, the one which concerned the perſon of the infant king, and the other, which regarded the kingdom; and in the fiefs there was a difference between the guardianſhip and the civil adminiſtration.

CHAP. XXVIII.

Of Adoption among the Germans.

AS the Germans became of age, by the wielding of arms, ſo they were adopted by the

* It appears from Gregory of Tours, l. 3. that ſhe choſe two natives of Burgundy, which had been conquered by Clodomir, to raiſe them to the ſee of Tours, which alſo belonged to Clodomir.

† Gregory of Tours, l. 5. c. 1. *vix luſtro ætatis suo jam peracto, qui die Dominicæ Natalis regnare cæpit.*

ſame

same sign. Thus Gontram, willing to declare his nephew Childebert of age, and to adopt him for his son, made use of these words. "I have "put (a) this javelin into thy hands, as a "token that I have given thee all my kingdom." Then turning toward the assembly he added, "You see that my son Childebert is grown a "man; obey him." Theodoric, king of the Ostrogoths, intending to adopt the king of the Heruli, wrote to him thus (b): "It is a noble "custom of ours to be adopted by arms; for "men of courage alone deserve to be our children. "Such is the efficacy of this act, that whoever is "the object of it, had rather die than submit to "any thing ignominious. Therefore in compli- "ance with the national usage, and because you "are a man of courage, we adopt you for our "son by these bucklers, these swords, these horses, "which we send you as a present."

Book XVIII. Chap. 28.

(a) See Gregory of Tours, book 7, c. 23.

(b) In Cassiod. lib. 4. ep. 2.

CHAP. XXIX.

Of the sanguinary Temper of the Kings of the Franks.

CLOVIS was not the only prince amongst the Franks who had invaded Gaul. Many of his relations had penetrated into this country with particular tribes; but as he had met with much greater success, and could grant considerable settlements to such as followed him, the Franks flocked to him from all parts, so that the other chiefs found themselves too weak to resist him. He formed a design of exterminating his whole race, and he succeeded (c). He feared, says Gregory of Tours (d), lest

(c) Gregory of Tours, l. 2.

(d) Ibid.

Book XVIII. Chap. 30.

left the Franks ſhould chuſe another chief. His children and ſucceſſors followed this practice to the utmoſt of their power. Thus the brother, the uncle, the nephew, and what is ſtill worſe the father or the ſon, were perpetually conſpiring againſt their whole family. The law continually divided the monarchy; while fear, ambition, and cruelty wanted to reunite it.

CHAP. XXX.

Of the national Aſſemblies of the Franks.

IT has been remarked above, that nations who do not cultivate the land enjoy great liberty. This was the caſe of the Germans. Tacitus ſays, that they gave their kings, or chiefs, a very moderate degree of power *; and Cæſar adds farther †, that in times of peace, they had no common magiſtrates; but their princes adminiſtred juſtice in each village. Thus, as Gregory of Tours (c) ſufficiently proves, the Franks in Germany had no king.

(c) Lib. 2.

"The princes, ſays Tacitus ‡, deliberate on "matters of no great concern; while affairs of "importance are ſubmitted to the whole nation; "but in ſuch a manner, that theſe very affairs, "which are under the cognizance of the peo-

* *Nec Regibus libera aut infinita poteſtas. Cæterum neque animadvertere, neque vincire, neque verberare*, &c. De morib. Germ.

† *In pace nullus eſt communis magiſtratus, ſed principes regionum atque pagorum inter ſuos jus dicunt.* De bello Gall. lib. 6.

‡ *De minoribus principes conſultant, de majoribus omnes; ita tamen ut ea quorum penes plebem arbitrium eſt, apud principes pertractentur.* De morib. Germ.

"ple,

"ple, are at the ſame time laid before the "princes." This cuſtom was obſerved by them after their conqueſts, as may be ſeen * in all their records. Book XVIII. Chap. 31.

Tacitus ſays †, that capital crimes might be carried before the aſſembly. It was the ſame after the conqueſt, when the great vaſſals were tried before that body.

CHAP. XXXI.

Of the Authority of the Clergy under the firſt Race.

THE prieſts of barbarous nations are commonly inveſted with power, becauſe they have both that authority which is due to them from their religious character, and that influence which amongſt ſuch a people is the offspring of ſuperſtition. Thus we ſee in Tacitus, that prieſts were held in great veneration by the Germans, and that they preſided ‡ in the aſſemblies of the people. They alone were permitted ‖ to chaſtiſe, to bind, to ſmite; which they did, not by order of the prince, or as his miniſters of juſtice? but as by an inſpiration of that Deity ever ſuppoſed to be preſent with thoſe who made war.

* *Lex conſenſu Populi fit & conſtitutione Regis.* Capitularies of Charles the Bald, Anno 864. art. 6.

† *Licet apud Concilium accuſare & diſcrimen capitis intendere.* De morib. Germ.

‡ *Silentium per ſacerdotes, quibus & coercendi jus eſt, imperatur.* De morib. Germ.

‖ *Nec legibus libera aut infinita poteſtas. Cæterùm neque animadvertere, neque vincire, neque verberare, niſi ſacerdotibus eſt permiſſum, non quaſi in pœnam, nec Ducis juſſu, ſed velut Deo imperante, quem adeſſe bellatoribus credunt.* De morib. Germ.

We

BOOK XVIII. Chap. 31.

We ought not therefore to be aſtoniſhed when from the very beginning of the firſt race, we meet with biſhops the diſpenſers of (f) juſtice; when we ſee them appear in the aſſemblies of the nation; when they have ſuch a prodigious influence on the minds of ſovereigns; and when they acquire ſo large a ſhare of property.

(f) See the conſtitutions of Clotarius in the year 560. art. 6.

BOOK XIX.

Of Laws in Relation to the Principles which form the general Spirit, the Morals and Cuſtoms of a Nation.

CHAP. I.

Of the Subject of this Book.

THIS ſubject is very extenſive. In that crowd of ideas which preſent themſelves to my mind, I ſhall be more attentive to the order of things, than to the things themſelves. I ſhall be obliged to wander to the right and to the left, that I may inveſtigate and diſcover the truth.

CHAP. II.

That it is neceſſary People's Minds ſhould be prepared for the Reception of the beſt Laws.

NOTHING could appear more inſupportable to the Germans * than the tribunal of Varus. That which Juſtinian (a) erected amongſt the Lazi, to proceed againſt the murderers of their king, appeared to them as an affair the moſt horrid and barbarous. Mithridates (b) haranguing againſt the Romans reproached them more particularly

(a) Agathias, lib. 4.

(b) Juſtin l. 38.

* They cut out the tongues of the advocates, and cried, Viper don't hiſs. Tacitus.

Book XIX. Chap. 3.

larly for their (c) law proceedings. The Parthians could not bear with one of their kings, who having been educated at Rome, rendered himself affable and * easy of access to all. Liberty itself has appeared intolerable to those nations, who have not been accustomed to enjoy it. Thus a pure air is sometimes disagreeable to such as have lived in a fenny country.

(c) *Calumnias litium.* ibid.

(d) He has described this interview, which happened in the Collection of voyages for the establishment of an India company. Vol. 3. part 1. p. 33.

Balbi, a Venetian, being at (d) Pegu, was introduced to the king. When the monarch was informed that they had no king at Venice, he burst into such a fit of laughter, that he was seized with a cough, and with difficulty could speak to his courtiers. What legislator could propose a popular government to a people like this?

CHAP. III.

Of Tyranny.

THERE are two sorts of tyranny; one real, which arises from oppression; the other is seated in opinion, and is sure to be felt, whenever those who govern, establish things shocking to the present ideas of a nation.

Dio tells us, that Augustus was desirous of being called Romulus; but having been informed, that the people feared, that he would cause himself to be crowned king, he changed his design. The old Romans were averse to a king; because they could not suffer any man to enjoy such power: these would not have a king, because they could

* *Prompti aditus, nova comitas, ignotæ Parthis virtutes, nova vitia.* Tacitus.

not

not bear his manners. For though Cæſar, the Triumvirs, and Auguſtus, were really inveſted with regal power, they had preſerved all the outward appearance of equality, while their private lives were a kind of contraſt to the pomp and luxury of foreign monarchs; ſo that when the Romans were reſolved to have no king, this only ſignified that they would preſerve their cuſtoms, and not imitate thoſe of the African and eaſtern nations.

The ſame writer informs us, that the Romans were exaſperated againſt Auguſtus for making certain laws which were too ſevere; but as ſoon as he had recalled Pylades the comedian, whom the jarring of different factions had driven out of the city, the diſcontent ceaſed. A people of this ſtamp have a more lively ſenſe of tyranny when a player is baniſhed, than when they are deprived of their laws.

CHAP. IV.

Of the general Spirit of Mankind.

MAnkind are influenced by various cauſes, by the climate, by the religion, by the laws, by the maxims of government, by precedents, morals, and cuſtoms; from whence is formed a general ſpirit of nations.

In proportion, as in every country, any one of theſe cauſes acts with more force, the others in the ſame degree are weakened. Nature and the climate rule almoſt alone over the ſavages; cuſtoms govern the Chineſe; the laws tyrannize in Japan; morals had formerly all their influence at Sparta; maxims of government, and the ancient ſimplicity of manners, once prevailed at Rome.

CHAP. V.

How far we ſhould be attentive leſt the general Spirit of a Nation be changed.

BOOK XIX. Chap. 5.

SHOULD there happen to be a country, whoſe inhabitants were of a ſociable temper, open-hearted, chearful, endowed with taſte and a facility in communicating their thoughts; who were ſprightly and agreeable; ſometimes imprudent, often indiſcreet; and beſides had courage, generoſity, frankneſs, and a certain notion of honor; no one ought to endeavour to reſtrain their manners by laws, unleſs he would lay a conſtraint on their virtues. If in general, the character be good, the little foibles that may be found in it, are of ſmall importance.

They might lay a reſtraint upon women, enact laws to reform their manners, and to reduce their luxury: but who knows but that by theſe means, thy might loſe that peculiar taſte which would be the ſource of the wealth of the nation, and that politeneſs, which would render the country frequented by ſtrangers?

It is the buſineſs of the legiſlature to follow the ſpirit of the nation, when it is not contrary to the principles of government; for we do nothing ſo well as when we act with freedom, and follow the bent of our natural genius.

If an air of pedantry be given to a nation that is naturally gay, the ſtate will gain no advantage from it, either at home or abroad. Leave it to do frivolous things in the moſt ſerious manner, and with gaiety things the moſt ſerious.

CHAP.

CHAP. VI.

That every Thing ought not to be corrected.

LET them but leave us as we are, ſaid a gentleman of a nation which had a very great reſemblance to that we have been deſcribing, and nature will repair whatever is amiſs. She has given us a vivacity capable of offending, and hurrying us beyond the bounds of reſpect: this ſame vivacity is corrected by the politeneſs it procures, inſpiring us with a taſte for the world, and, above all, for the converſation of the fair ſex. BOOK XIV. Ch. 6. & 7.

Let them leave us as we are: our indiſcretions joined to our good nature, would make the laws which ſhould conſtrain our ſociability, not at all proper for us.

CHAP. VII.

Of the Athenians and Lacedæmonians.

THE Athenians, this gentleman adds, were a nation that had ſome relation to ours. They mingled gaiety with buſineſs; a ſtroke of raillery was as agreeable in the ſenate, as in the theatre. This vivacity, which diſcovered itſelf in their councils, went along with them in the execution of their reſolves. The characteriſtic of the Spartans was gravity, ſerioufneſs, ſeverity, and ſilence. It would have been as difficult to bring over an Athenian by teazing, as it would a Spartan by diverting him.

CHAP. VIII.

Effects of a ſociable Temper.

Book XIX. Ch. 8. &9.

THE more communicative a people are, the more eaſily they change their habits, becauſe each is in a greater degree a ſpectacle to the other; and the ſingularities of individuals are better obſerved. The climate which influences one nation to take a pleaſure in being communicative, makes it alſo delight in change; and that which makes it delight in change, forms its taſte.

The ſociety of the fair ſex ſpoils the manners, and forms the taſte; the deſire of giving greater pleaſure than others, eſtabliſhes the embelliſhments of dreſs; and the deſire of pleaſing others more than ourſelves gives riſe to faſhions. This mode is a ſubject of importance: by giving a trifling turn of mind, it continually increaſes the branches of its commerce (e).

(e) Fable of the bees.

CHAP. IX.

Of the Vanity and Pride of Nations.

VANITY is as advantageous to a government, as pride is dangerous. To be convinced of this, we need only repreſent, on the one hand, the numberleſs benefits which reſult from vanity; as induſtry, the arts, faſhions, politeneſs, and taſte: on the other, the infinite evils which ſpring from the pride of certain nations, as lazineſs, poverty, a total neglect of every thing; in fine, the deſtruction of the nations which have happened to fall under their government, as well as of

their own. Lazineſs * is the effect of pride; labour a conſequence of vanity: the pride of a Spaniard leads him to decline labour; the vanity of a Frenchman to work better than others. Book XIX. Chap. 9.

All lazy nations are grave: for thoſe who do not labour, regard themſelves as the ſovereigns of thoſe who do.

If we ſearch amongſt all nations, we ſhall find that for the moſt part, gravity, pride, and indolence go hand in hand.

The people of Achim (f) are proud and lazy; thoſe who have no ſlaves hire one, if it be only to carry a quart of rice a hundred paces; they would be diſhonoured if they carried it themſelves.

(f) See Dampier, Vol. 3.

In many places people let their nails grow, that all may ſee they do not work.

Women in the Indies (g) believe it ſhameful for them to learn to read: this is, they ſay, the buſineſs of the ſlaves, who ſing their ſpiritual ſongs in the temples of their pagods. In one tribe they don't ſpin; in another they make nothing but baſkets and mats; they are not even to pound rice; and in others they muſt not go to fetch water. Theſe rules are eſtabliſhed by pride, and the ſame paſſion makes them followed. There is no neceſſity for mentioning that the moral qualities, according as they are blended with others, are productive of different effects: thus pride joined to a vaſt ambition, and no-

(g) Edifying Letters, 12th Collect. p. 80.

* The people who follow the Khan of Malacamber, thoſe of Carnataca and Coromandel, are proud and indolent; they conſume little, becauſe they are miſerably poor; while the ſubjects of the Mogul, and the people of Indoſtan, employ themſelves and enjoy the conveniencies of life like the Europeans. *Collection of Voyages for the Eſtabliſhment of an India Company*, Vol. 1. p. 54.

Book XIX. Chap. 10.

tions of grandeur, produced ſuch effects among the Romans as are known to all the world.

CHAP. X.

Of the Character of the Spaniards and Chineſe.

THE characters of the ſeveral nations are formed of virtues and vices, of good and bad qualities. From the happy mixture of theſe, great advantages reſult, and frequently where it would be leaſt expected; there are others from whence great evils ariſe, evils which one would not ſuſpect.

The Spaniards have been in all ages famous for their honeſty. Juſtin (h) mentions their fidelity in keeping whatever was intruſted to their care; they have frequently ſuffered death rather than reveal a ſecret. They have ſtill the ſame fidelity for which they were formerly diſtinguiſhed. All the nations who trade to Cadiz, truſt their fortunes to the Spaniards, and have never yet repented it. But this admirable quality, joined to their indolence, forms a mixture from whence ſuch effects reſult as to them are moſt pernicious. The reſt of the European nations carry on in their very ſight all the commerce of their monarchy.

(h) Lib. 43.

The character of the Chineſe is formed of another mixture, directly oppoſite to that of the Spaniards. The precarioufneſs of their ſubſiſtence *, inſpires them with a prodigious activity, and ſuch an exceſſive deſire of gain, that no trading nation can confide in them (i). This acknowledged infidelity has ſecured them the poſſeſſion of the trade to

(i) Du-Halde, Vol. 2.

* By the nature of the ſoil and climate.

Japan.

Japan. No European merchant has ever dared to undertake it in their name, how eaſy ſoever it might be for them to do it from their maritime provinces in the north.

CHAP. XI.

A Reflection.

I Have ſaid nothing here with a view to leſſen that infinite diſtance, which muſt ever be between virtue and vice. God forbid, that I ſhould be guilty of ſuch an attempt! I would only make my readers comprehend that all political are not all moral vices; and that all moral, are not political vices; and that thoſe who make laws which ſhock the general ſpirit of a nation, ought not to be ignorant of this.

CHAP. XII.

Of Cuſtoms and Manners in a deſpotic State.

IT is a capital maxim, that the manners and cuſtoms of a deſpotic empire ought never to be changed; for nothing would more ſpeedily produce a revolution. The reaſon is that in theſe ſtates there are no laws, that is none, that can be properly called ſo; there are only manners and cuſtoms; and if you overturn theſe, you overturn all.

Laws are eſtabliſhed, manners are inſpired; theſe proceed from a general ſpirit, thoſe, from a particular inſtitution: now it is as dangerous, nay more ſo, to ſubvert the general ſpirit, as to change a particular inſtitution.

There

Book XIX. Chap. 12.

There is leſs communication in a country where each, either as ſuperior or inferior, exerciſes or is oppreſſed by arbitrary power, than there is in thoſe where liberty reigns in every ſtation. They do not therefore ſo often change their manners and behaviour. Fixed and eſtabliſhed cuſtoms have a near reſemblance to laws. Thus it is here neceſſary that a prince or a legiſlator ſhould leſs oppoſe the manners and cuſtom of the people, than in any other country upon earth.

Their women are commonly confined, and have no influence in ſociety. In other countries where they have an intercourſe with men, their deſire of pleaſing, and the deſire men alſo have of giving them pleaſure, produce a continual change of cuſtoms. The two ſexes ſpoil each other, they both loſe their diſtinctive and eſſential quality; what was naturally fixt becomes quite unſettled, and their cuſtoms, and behaviour alter every day.

CHAP. XIII.

Of the Behaviour of the Chineſe.

BUT China is the place where the cuſtoms of the country can never be changed. Beſides, their women being abſolutely ſeparated from the men, their cuſtoms, like their morals, are taught in the ſchools. A man of (k) letters may be known by his eaſy addreſs. Theſe things being once taught by precept, and inculcated by grave doctors, become fixed, like the principles of morality, and are never changed.

(k) Du-Halde.

CHAP.

CHAP. XIV.

What are the natural Means of changing the Manners and Cuſtoms of a Nation.

WE have ſaid that the laws were the particular and preciſe inſtitutions of a legiſlator, and manners and cuſtoms the inſtitutions of a nation in general. From hence it follows that when theſe manners and cuſtoms are to be changed, it ought not to be done by laws; this would have too much the air of tyranny: it would be better to change them by introducing other manners and other cuſtoms.

Thus when a prince would make great alterations in his kingdom, he ſhould reform by law what is eſtabliſhed by law, and change by cuſtom what is ſettled by cuſtom; for it is very bad policy to change by law, what ought to be changed by cuſtom.

The law which obliged the Muſcovites to cut off their beards, and to ſhorten their cloaths, and the rigour with which Peter I. made them crop even to the knees, the long cloaks of thoſe who entered into the cities, were inſtances of tyranny. There are means that may be made uſe of to prevent crimes; theſe are puniſhments: there are thoſe for changing our cuſtoms; theſe are examples.

The facility and eaſe with which that nation has been poliſhed, plainly ſhews, that this prince had a worſe opinion of his people than they deſerved; and that they were not brutes, though he was pleaſed to call them ſo. The violent meaſures which

which he employed were needleſs; he would have attained his end as well by milder methods.

He himſelf experienced the facility of bringing about theſe alterations. The women were ſhut up, and in ſome meaſure ſlaves; he called them to court; he ſent them ſilks and fine ſtuffs, and made them dreſs like the German ladies. This ſex immediately reliſhed a manner of life which ſo greatly flattered their taſte, their vanity, and their paſſions; and by their means it was reliſhed by the men.

What rendered the change the more eaſy was, that their manners at that time were foreign to the climate; and had been introduced amongſt them by conqueſt, and by a mixture of nations. Peter I. in giving the manners and cuſtoms of Europe to an European nation, found a facility which he did not himſelf expect. The empire of the climate is the firſt, the moſt powerful of all empires. He had then no occaſion for laws to change the manners and cuſtoms of his country; it would have been ſufficient to have introduced other manners and other cuſtoms.

Nations are in general very tenacious of their cuſtoms; to take them away by violence is to render them unhappy: we ſhould not therefore change them, but engage the people to make the change themſelves.

All puniſhment which is not derived from neceſſity, is tyrannical. The law is not a mere act of power; things in their own nature indifferent are not within its province.

CHAP.

CHAP. XV.

The influence of domeſtic Government on the political.

THIS alteration in the manners of women will doubtleſs have a great influence on the government of Muſcovy. One naturally follows the other: the deſpotic power of the prince is connected with the ſervitude of women; the liberty of women with the ſpirit of monarchy. Book XIX. Chap. 15. and 16.

CHAP. XVI.

How ſome Legiſlators have confounded the Principles which govern Mankind.

MANNERS and cuſtoms are thoſe habits which are not eſtabliſhed by legiſlators, either becauſe they were not able, or were not willing to eſtabliſh them.

There is the difference between laws and manners, that the laws are moſt adapted to regulate the actions of the ſubject, and manners to regulate the actions of the man. There is this difference between manners and cuſtoms, that the former principally relate to the interior conduct, the latter to the exterior.

Theſe things * have been ſometimes confounded. Lycurgus made the ſame code for the laws, manners, and cuſtoms; and the legiſlators of China have done the ſame.

* Moſes made the ſame code for laws and religion. The old Romans confounded the ancient cuſtoms with the laws.

We

Book XIX. Chap. 16.

We ought not to be ſurprized, that the legiſlators of China and Sparta ſhould confound the laws, manners, and cuſtoms: the reaſon is, their manners repreſent their laws, and their cuſtoms their manners.

The principal object which the legiſlators of China had in view, was to make their ſubjects live in peace and tranquillity. They would have people filled with a veneration for one another, that each ſhould be every moment ſenſible of his dependence on ſociety, and of the obligations he owed to his fellow citizens. They therefore gave rules of the moſt extenſive civility.

(l) See Du Halde.

Thus the inhabitants of the (l) villages of China, practiſe amongſt themſelves the ſame ceremonies, as thoſe obſerved by perſons of an exalted ſtation; a very proper method of inſpiring mild and gentle diſpoſitions, of maintaining peace and good order, and of baniſhing all the vices which ſpring from an aſperity of temper. In effect, would not the freeing them from the rules of civility, be to ſearch out a method for them to indulge their own humours?

Civility is in this reſpect of more value than politeneſs. Politeneſs flatters the vices of others, and civility prevents ours from being brought to light. It is a barrier which men have placed within themſelves to prevent the corruption of each other.

Lycurgus, whoſe inſtitutions were ſevere, had no regard to civility, in forming the external behaviour; he had a view to that warlike ſpirit with which he would fain inſpire his people. A people who were in a continual ſtate of diſcipline and inſtruction,

ſtruction, and who were endued with equal ſimplicity and rigor, atoned by their virtues, for their want of complaiſance.

CHAP. XVII.

Of the peculiar Quality of the Chineſe Government.

THE legiſlators of China went farther (m). They confounded together their religion, laws, manners, and cuſtoms; all theſe were morality, all theſe were virtue. The precepts relating to theſe four points were what they called rites; and it was in the exact obſervance of theſe, that the Chineſe government triumphed. They ſpent their whole youth in learning them, their whole life in the practice. They were taught by their men of letters, they were inculcated by the magiſtrates; and as they included all the ordinary actions of life, when they found the means of making them ſtrictly obſerved, China was well governed.

(m) See the Claſſic books from which father Du Halde gives us ſome excellent extracts.

Two things have contributed to the eaſe with which theſe rites are engraved in the hearts and minds of the Chineſe; one, the difficulty of writing, which during the greateſt part of their lives wholly employs their attention *, becauſe it is neceſſary to prepare them to read and underſtand the books in which they are comprized; the other, that the ritual precepts having nothing in them, that is ſpiritual, but being merely rules of common practice, are more adapted to convince and ſtrike the mind than things merely intellectual.

Thoſe princes who inſtead of ruling by theſe rites, governed by the force of puniſhments, wanted

* It is this which has eſtabliſhed emulation, which has baniſhed lazineſs, and cultivated a love of learning.

to

BOOK XIX. Chap. 18.

to accompliſh that by puniſhments, which it is not in their power to produce, that is, to give habits of morality. By puniſhments a ſubject is very juſtly cut off from ſociety, who having loſt the purity of his manners, violates the laws; but if all the world were to loſe their moral habits, would theſe re-eſtabliſh them? Puniſhments may be juſtly inflicted to put a ſtop to many of the conſequences of the general evil, but they will not remove the evil itſelf. Thus when the principles of the Chineſe government were diſcarded, and morality was baniſhed, the ſtate fell into anarchy, and revolutions ſucceeded.

CHAP. XVIII.

A Conſequence drawn from the preceding Chapter.

FROM hence it follows that the laws of China are not deſtroyed by conqueſt. Their cuſtoms, manners, laws, and religion, being the ſame thing, they cannot change all theſe at once; and as it will happen, that either the conqueror or the conquered muſt change, in China it has always been the conqueror. For the manners of the conquering nation not being their cuſtoms, nor their cuſtoms their laws, nor their laws their religion, it has been more eaſy for them to conform by degrees to the vanquiſhed people, than the latter to them.

There ſtill follows from hence a very unhappy conſequence, which is, that it is almoſt impoſſible for * Chriſtianity ever to be eſtabliſhed in China.

* See the reaſons given by the Chineſe magiſtrates in their decrees for proſcribing the Chriſtian religion. *Edifying Letters, 17th Collect.*

The

The vows of virginity, the aſſembling of women in churches, their neceſſary communication with the miniſters of religion, their participation in the ſacraments, auricular confeſſion, extreme unction, the marriage of only one wife, all theſe overturn the manners and cuſtoms of the country, and with the ſame blow ſtrike at their religion and laws. Book XIX. Chap. 19.

The Chriſtian religion, by the eſtabliſhment of charity, by a public worſhip, by a participation of the ſame ſacraments, ſeems to demand, that all ſhould be united; while the rites of China ſeem to ordain that all ſhould be ſeparated.

And as we have ſeen that this ſeparation (n) depends, in general, on the ſpirit of deſpotiſm, this will ſhew us the reaſon why monarchies, and indeed, all moderate governments, are more conſiſtent (o) with the Chriſtian religion.

(n) See book 4. c. 3. and book 19. c. 12.

(o) See book 24. c. 3.

CHAP. XIX.

How this Union of Religion, Laws, Manners, and Cuſtoms, amongſt the Chineſe, was effected.

THE principal object of government which the Chineſe legiſlators had in view, was the peace and tranquillity of the empire: and ſubordination appeared to them as the moſt proper means to maintain it. Filled with this idea, they believed it their duty to inſpire a reſpect for parents, and therefore exerted all their power to effect it. They eſtabliſhed an infinite number of rites and ceremonies to do them honor when living, and after their death. It was impoſſible for them to pay ſuch honors to deceaſed parents, without being led to reverence the living. The ceremonies at the

death of a father were more nearly related to religion; those for a living parent had a greater relation to the laws, manners, and customs: however these were only parts of the same code; but this code was very extensive.

A veneration for their parents was necessarily connected with a suitable respect for all who represented them, such as old men, masters, magistrates, and the sovereign. This respect for parents, supposed a return of love towards children, and consequently the same return from old men to the young, from magistrates to those who were under their jurisdiction, and from the emperor to his subjects. This formed the rites, and these rites the general spirit of the nation.

We shall now shew the relation which things in appearance the most indifferent, may have to the fundamental constitution of China. This empire is formed on the plan of a government of a family. If you diminish the paternal authority, or even if you retrench the ceremonies, which express your respect for it, you weaken the reverence due to magistrates, who are considered as fathers; nor would the magistrates have the same care of the people, whom they ought to look upon as their children; and that tender relation which subsists between the prince and his subjects, would insensibly be lost. Retrench but one of these habits, and you overturn the state. It is a thing in itself very indifferent whether the daughter-in-law rises every morning to pay such and such duties to her mother-in-law: but if we consider that these exterior habits incessantly revive an idea necessary to be imprinted on all minds, an idea that forms the ruling spirit of the empire,

empire, we ſhall ſee that it is neceſſary that ſuch, or ſuch a particular action be performed.

CHAP. XX.

Explication of a Paradox relating to the Chineſe.

IT is very remarkable that the Chineſe, whoſe lives are guided by rites, are nevertheleſs the greateſt cheats upon earth. This appears chiefly in their trade, which, in ſpite of its natural tendency, has never been able to make them honeſt. He who buys of them, ought to carry with him his own (P) weights, every merchant having three ſorts, the one heavy for buying, another light for ſelling, and another of the true ſtandard for thoſe who are upon their guard. It is poſſible, I believe, to explain this contradiction.

(P) Lange's Journal in 1721, and 1722, in Voyages to the north, vol. 8. p. 363.

The legiſlators of China had two objects in view; they were deſirous that the people ſhould be ſubmiſſive and peaceful, and that they ſhould alſo be laborious and induſtrious. By the nature of the ſoil and climate, their ſubſiſtence is very precarious; nor can it be any other way ſecured, than by induſtry and labour.

When every one obeys, and every one is employed, the ſtate is in a happy ſituation. It is neceſſity, and perhaps the nature of the climate, that has given to the Chineſe an inconceivable greedineſs for gain, and laws have never been made to reſtrain it. Every thing has been forbidden, when acquired by acts of violence; every thing permitted, when obtained by artifice or labour. Let us not then compare the morals of China

Book XIX. Chap. 21. and 22.

with thoſe of Europe. Every one in China is obliged to be attentive to what will be for his advantage; if the cheat has been watchful over his own intereſt, he who is the dupe ought to be attentive to his. At Sparta they were permitted to ſteal; in China, they are ſuffered to deceive.

CHAP. XXI.

How the Laws ought to have a Relation to Manners and Cuſtoms.

IT is only ſingular inſtitutions which thus confound laws, manners, and cuſtoms, things naturally diſtinct and ſeparate: but though they are in themſelves different, there is nevertheleſs a great relation between them.

Solon being aſked if the laws he had given to the Athenians, were the beſt, he replied, "I "have given them the beſt they were able to "bear." A fine expreſſion, that ought to be perfectly underſtood by all legiſlators! When Divine Wiſdom ſaid to the Jews, "I have given you "precepts which are not good," this ſignified that they had only a relative goodneſs; which is the ſponge that wipes out all the difficulties in the law of Moſes.

CHAP. XXII.

The ſame Subject continued.

WHEN a people have pure and regular manners, their laws become ſimple and natural. Plato (q) ſays that Rhadamanthus, who governed

(q) Of Laws, lib. 12.

governed a nation extremely religious, finiſhed every proceſs with extraordinary diſpatch, adminiſtering only the oath on each accuſation. But ſays the ſame Plato (r), when a people are not religious, we ſhould never have recourſe to an oath, except he who ſwears is intirely diſintereſted, as in the caſe of a judge and a witneſs. BOOK XIX. Chap. 23. and 24.

(r) Of Laws, l. 12.

CHAP. XXIII.

How the Laws are founded on the Manners of a People.

AT the time when the manners of the Romans were pure, they had no particular law againſt the embezzlement of the public money. When this crime began to appear, it was thought ſo infamous, that to be condemned to reſtore (f) what they had taken, was conſidered as a ſufficient diſgrace: for a proof of this, ſee the ſentence of L. Scipio (t).

(f) *In ſimplum.*

(t) Livy, l. 38

CHAP. XXIV.

The ſame Subject continued.

THE laws which gave the right of tutelage to the mother, were moſt attentive to the preſervation of the infant's perſon; thoſe which granted it to the next heir, were moſt attentive to the preſervation of the eſtate. When the manners of a people are corrupted, it is much better to give the tutelage to the mother. Amongſt thoſe whoſe laws confide in the manners of the ſubjects, the guardianſhip is granted either to the next heir, or to the mother, and ſometimes to both.

BOOK XIX. Chap. 25.

If we reflect on the Roman laws, we ſhall find that the ſpirit of theſe was conformable to what I have advanced. At the time when the laws of the twelve tables were made, the manners of the Romans were moſt admirable. The guardianſhip was given to the neareſt relation of the infant, from a conſideration that he ought to have the trouble of the tutelage, who might enjoy the advantage of poſſeſſing the inheritance. They did not imagine the life of the heir in danger, though it was put into a perſon's hands who would reap a benefit by his death. But when the manners of Rome were changed, her legiſlators altered their conduct. If in the pupillary ſubſtitution, ſay Caius (t) and Juſtinian (x), the teſtator is afraid, that the ſubſtitute will lay any ſnares for the pupil, he may leave the vulgar * ſubſtitution open, and put the pupillary into a part of the teſtament, which cannot be opened till after a certain time. Theſe fears and precautions were unknown to the primitive Romans.

(t) Inſtitut. Lib. tit. 2. 6. §. 2. Ozel's compilement at Leyden, in 1658.

(x) Inſtitut. l. 2. *de pupil ſubſtit.* §. 3.

CHAP. XXV.

The ſame Subject continued.

THE Roman law gave the liberty of making preſents before marriage; after the marriage they were not allowed. This was founded on the manners of the Romans who were led to marriage, only by frugality, ſimplicity, and modeſty; but might ſuffer themſelves to be ſe-

* The form of the vulgar ſubſtitution ran thus; If ſuch a one is unwilling to take the inheritance, I ſubſtitute in his ſtead, &c. the pupillary ſubſtitution, If ſuch a one dies before he arrives at the age of puberty, I ſubſtitute, &c.

duced

duced by domeſtic cares, by complacency, and the conſtant tenour of conjugal felicity. BOOK XIX. Chap. 26.

A law of the (y) Viſigoths forbad the man giving more to the woman he was to marry than the tenth part of his ſubſtance, and his giving her any thing during the firſt year of their marriage. This alſo took its riſe from the manners of the country. The legiſlators were willing to put a ſtop to that Spaniſh oſtentation, which only led them to diſplay an exceſſive liberality in acts of magnificence. (y) Lib. 3. tit. 5. § 5.

The Romans by their laws, put a ſtop to ſome of the inconveniencies which aroſe from the moſt durable empire in the world, that of virtue; the Spaniards by theirs, would prevent the bad effects of a tyranny, the moſt frail and tranſitory, that of beauty.

CHAP. XXVI.

The ſame Subject continued.

THE law (z) of Theodoſius and Valentinian drew the cauſes of repudiation from the ancient manners (a) and cuſtoms of the Romans. It placed in the number of theſe cauſes the behaviour of a huſband * who beat his wife, in a manner that diſgraced the character of a freeborn woman. This cauſe was omitted in the following laws (b): for their manners, in this reſpect, had undergone a change; the eaſtern cuſtoms having baniſhed thoſe of Europe. The firſt eunuch of the empreſs, wife to Juſtinian II. threatened her, ſays the hiſtorian, to chaſtize her in the ſame manner as children

(z) Leg. 8. cod *de Repudiis.*

(a) And the law of the 12 tables. See Cicero's 2d Philippic.

(b) In Nov. 117. c. 14.

* *Si verberib quæ ingenuis aliena ſunt, afficientem probaverit.*

Book XIX. Chap. 27.

are punished at school. Nothing but established manners, or those which they were seeking to establish, could raise even an idea of this kind.

We have seen how the laws follow the manners of a people: let us now observe how the manners follow the laws.

CHAP. XXVII.

How the Laws contribute to form the Manners, Customs, and Character of a Nation.

THE customs of an enslaved people are a part of their servitude, those of a free people are a part of their liberty.

I have spoken in the eleventh Book (c) of a free people, and have given the principles of their constitution: let us now see the effects which follow from this liberty, the character it is capable of forming, and the customs which naturally result from it.

(c) Ch. 6.

I do not deny that the climate may have produced great part of the laws, manners, and customs of this nation; but I maintain that its manners and customs, have a close connection with its laws.

As there are in this state two visible powers, the legislative and executive, and as every citizen has a will of his own, and may at pleasure assert his independence; most men have a greater fondness for one of these powers than for the other, and the multitude have commonly neither equity nor sense enough, to shew an equal affection to both.

And as the executive power, by disposing of all employments, may give great hopes, and no fears, every man who obtains any favour from it, is ready

to

to eſpouſe its cauſe; while it is liable to be attacked by thoſe who have nothing to hope from it.

All the paſſions being unreſtrained, hatred, envy, jealouſy, and an ambitious deſire of riches and honors, appear in their full extent: were it otherwiſe the ſtate would be in the condition of a man weakened by ſickneſs, who is without paſſions, becauſe he is without ſtrength.

The hatred which ariſes between the two parties will always ſubſiſt, becauſe it will always be impotent.

Theſe parties being compoſed of freemen, if the one becomes too powerful for the other, as a conſequence of liberty, this other is depreſſed; while the citizens take the weaker ſide, with the ſame readineſs as the hands lend their aſſiſtance to remove the infirmities and diſorders of the body.

Every individual is independent, and being commonly led by caprice and humour, frequently changes parties; he abandons one where he left all his friends, to unite himſelf to another in which he finds all his enemies: ſo that in this nation it frequently happens that the people forget the laws of friendſhip, as well as thoſe of hatred.

The ſovereign is here in the ſame caſe with a private perſon, and againſt the ordinary maxims of prudence, is frequently obliged to give his confidence to thoſe who have moſt offended him, and to diſgrace the men who have beſt ſerved him: he does that by neceſſity which other princes do by choice.

As we are afraid of being deprived of the bleſſing we already enjoy, and which may be diſguiſed and miſrepreſented to us; and as fear always enlarges objects;

objects; the people are uneasy under such a situation, and believe themselves in danger, even in those moments when they are most secure.

As those who with the greatest warmth oppose the executive power, dare not avow the self-interested motives of their opposition, so much the more do they increase the terrors of the people, who can never be certain whether they are in danger or not. But even this contributes to make them avoid the real dangers, to which they may, in the end, be exposed.

But the legislative body having the confidence of the people, and being more enlightened than they, may calm their uneasiness, and make them recover from the bad impressions they have entertained.

This is the great advantage which this government has over the ancient democracies, in which the people had an immediate power; for when they were moved and agitated by the orators, these agitations always produced their effect.

But when an impression of terror has no certain object, it produces only clamour and abuse; it has however this good effect, that it puts all the springs of government into motion, and fixes the attention of every citizen. But if it arises from a violation of the fundamental laws, it is sullen, cruel, and produces the most dreadful catastrophes.

Soon we should see a frightful calm, during which every one would unite against that power which had violated the laws.

If when the uneasiness proceeds from no certain object, some foreign power should threaten the state or put its prosperity or its glory in danger, the little interests of party would then yield to the

more ſtrong and binding, and there would be a perfect coalition in favour of the executive power.

But if the diſputes were occaſioned by a violation of the fundamental laws, and a foreign power ſhould appear; there would be a revolution that would neither alter the conſtitution nor the form of government. For a revolution formed by liberty becomes a confirmation of liberty.

A free nation may have a deliverer; a nation enſlaved can have only another oppreſſor.

For whoever is able to dethrone an abſolute prince, has a power ſufficient to become abſolute himſelf.

As the enjoyment of liberty, and even its ſupport and preſervation, conſiſts in every man's being allowed to ſpeak his thoughts and to lay open his ſentiments; a citizen in this ſtate will ſay or write whatever the laws do not expreſly forbid to be ſaid or written.

A people like this being always in a ferment, are more eaſily conducted by their paſſions than by reaſon, which never produces any great effect in the mind of man; it is therefore eaſy for thoſe who govern, to make them undertake enterprizes contrary to their true intereſt.

This nation is paſſionately fond of liberty, becauſe this liberty is real; and it is poſſible for it, in its defence, to ſacrifice its wealth, its eaſe, its intereſt, and to ſupport the burthen of the moſt heavy taxes, even ſuch as a deſpotic prince durſt not lay upon his ſubjects.

But as the people have a certain knowledge of the neceſſity of ſubmitting to thoſe taxes, they pay them from the well founded hope of their diſcontinu-

ance; their burthens are heavy, but they do not feel their weight: while in other ſtates the uneaſineſs is infinitely greater than the evil.

This nation muſt therefore have a fixed and certain credit, becauſe it borrows of itſelf and pays itſelf. It is poſſible for it to undertake things above its natural ſtrength, and employ againſt its enemies immenſe ſums of fictitious riches, which the credit and nature of the government may render real.

To preſerve its liberty, it borrows of its ſubjects; and the ſubjects ſeeing that its credit would be loſt, if ever it were conquered, have a new motive to make freſh efforts in defence of its liberty.

This nation inhabiting an iſland is not fond of conquering, becauſe it would be weakened by diſtant conqueſts: eſpecially as the ſoil of the iſland is good; for it has then no need of enriching itſelf by war; and as no citizen is ſubject to another, each ſets a greater value on his own liberty, than on the glory of one, or any number of citizens.

Military men are there regarded as belonging to a profeſſion which may be uſeful, but is often dangerous; and as men whoſe very ſervices are burthenſome to the nation: civil qualifications are therefore more eſteemed than the military.

This nation, which liberty and the laws render eaſy, on being freed from pernicious prejudices, is become a trading people; and as it has ſome of thoſe primitive materials of trade, out of which are manufactured ſuch things as from the artiſt's hand receive a conſiderable value, it has made ſettlements proper to procure the enjoyment of this gift of heaven in its fulleſt extent,

As this nation is ſituated towards the north, and has many ſuperfluous commodities, it muſt want alſo a great number of merchandizes which its climate will not produce: it has therefore entered into a great and neceſſary intercourſe with the ſouthern nations; and making choice of thoſe ſtates whom it is willing to favour with an advantageous commerce, it enters into ſuch treaties with the nation it has choſen, as are reciprocally uſeful to both.

In a ſtate, where on the one hand the opulence is extreme, and on the other the taxes are exceſſive, they are hardly able to live on a ſmall fortune without induſtry: Many, therefore, under a pretence of travelling, or of health, retire from amongſt them, and go in ſearch of plenty, even to the countries of ſlavery.

A trading nation has a prodigious number of little particular intereſts; it may then injure or be injured, an infinite number of ways. Thus it becomes immoderately jealous, and is more afflicted at the proſperity of others, than it rejoices at its own.

And its laws, otherwiſe mild and eaſy, may be ſo rigid with reſpect to the trade and navigation carried on with it, that it may ſeem to trade only with enemies.

If this nation ſends colonies abroad, it muſt rather be to extend its commerce than its dominion.

As men are fond of introducing into other places what they have eſtabliſhed amongſt themſelves, they have given the people of the colonies their own form of government; and this government carrying proſperity along with it, they have raiſed great nations in the foreſts they were ſent to inhabit.

Having

Having formerly ſubdued a neighbouring nation, which by its ſituation, the goodneſs of its ports, and the nature of its products, inſpires it with jealouſy, though it has given this nation its own laws, yet it holds it in great dependance: the ſubjects there are free and the ſtate itſelf in ſlavery.

The conquered ſtate has an excellent civil government, but is oppreſſed by the law of nations; laws are impoſed by one country on the other, and theſe are ſuch as render its proſperity precarious, and dependent on the will of a maſter.

The ruling nation inhabiting a large iſland, and being in poſſeſſion of a great trade, hath with extraordinary eaſe grown powerful at ſea; and as the preſervation of its liberties require that it ſhould have neither ſtrong-holds, nor fortreſſes, nor land forces, it has occaſion for a formidable navy to defend it againſt invaſions; a navy which muſt be ſuperior to that of all other powers, who employing their treaſures in wars at land, have not ſufficient for thoſe at ſea.

The empire of the ſea has always given thoſe who have enjoyed it a natural pride; becauſe thinking themſelves capable of extending their inſults wherever they pleaſe, they imagine that their power is as boundleſs as the ocean.

This nation has a great influence in the affairs of its neighbours; for as its power is not employed in conqueſts, its friendſhip is more courted, and its reſentment more dreaded, than could naturally be expected from the inconſtancy of its government, and its domeſtic diviſions.

Thus it is the fate of the executive power to be almoſt always diſturbed at home and reſpected abroad.

Should

Should this nation on ſome occaſions become the center of the negociations of Europe, probity and good faith would be carried to a greater height than in other places; becauſe the miniſters being frequently obliged to juſtify their conduct before a popular council, their negociations could not be ſecret; and they would be forced to be, in this reſpect, a little more honeſt.

Beſides, as they would in ſome ſort be anſwerable for the events which an irregular conduct might produce, the ſureſt, the ſafeſt way for them, would be to take the ſtraighteſt path.

If the nobles were formerly poſſeſſed of an immoderate power, and the monarch had found the means of abaſing them by raiſing the people; the point of extreme ſervitude muſt have been that between humbling the nobility, and that in which the people began to feel their power.

Thus this nation having been formerly ſubject to an arbitrary power, on many occaſions preſerves the ſtile of it, in ſuch a manner, as to let us frequently ſee upon the foundation of a free government, the form of an abſolute monarchy.

With regard to religion, as in this ſtate every ſubject has a free will, and muſt conſequently be either conducted by the light of his own mind or by the caprice of fancy; it neceſſarily follows, that every one muſt either look upon all religion with indifference, by which means they are led to embrace the eſtabliſhed religion; or they muſt be zealous for religion in general, by which means the number of ſects is encreaſed.

It is not impoſſible but that in this nation there may be men of no religion, who would not, however,

however, bear to be obliged to change that which they would chuſe, if they cared to chuſe any; for they would immediately perceive that their lives and fortunes are not more peculiarly theirs than their manner of thinking, and that whoever would deprive them of the one, might, even with better reaſon, take away the other.

If amongſt the different religions, there is one that has been attempted to be eſtabliſhed by methods of ſlavery, it muſt there be odious; becauſe as we judge of things by the appendages we join with them, it could never preſent itſelf to the mind in conjunction with the idea of liberty.

The laws againſt thoſe who profeſs this religion could not however be of the ſanguinary kind; for liberty can never inflict ſuch puniſhments: but they may be ſo rigorous as to do all the miſchief that can be done in cold blood.

It is poſſible that a thouſand circumſtances might concur to give the clergy ſo little credit, that other citizens may have more. Therefore inſtead of a ſeparation, they have choſe rather to ſupport the ſame burthens as the laity, and in this reſpect to make only one body with them: but as they always ſeek to conciliate the reſpect of the people, they diſtinguiſh themſelves by a more retired life, a conduct more reſerved, and a greater purity of manners.

The clergy not being able to protect religion, nor to be protected by it, only ſeek to perſuade: their pens, therefore, furniſh us with excellent works in proof of a revelation, and of the providence of the Supreme Being.

Yet the ſtate prevents the ſitting of their aſſemblies, and does not ſuffer them to correct their own abuſes;

abuſes; it chuſes thus, through a caprice of liberty, rather to leave their reformation imperfect, than to ſuffer the clergy to be the reformers. BOOK XIX. Chap. 27.

Thoſe dignities which make a fundamental part of the conſtitution are more fixed than elſewhere; but, on the other hand, the great in this country of liberty, are nearer upon a level with the people; their ranks are more ſeparated, and their perſons more confounded.

As thoſe who govern have a power which, in ſome meaſure, has need of freſh vigor every day, they have a greater regard for ſuch as are uſeful to them, than for thoſe who only contribute to their amuſement: we ſee therefore fewer courtiers, flatterers, and paraſites; in ſhort, fewer of all thoſe who make their own advantage of the folly of the great.

Men are leſs eſteemed for frivolous talents and attainments, than for eſſential qualities; and of this kind there are but two, riches, and perſonal merit.

They enjoy a ſolid luxury, founded not on the refinements of vanity, but on that of real wants; they aſk nothing of nature but what nature can beſtow.

The rich enjoy a great ſuperfluity of fortune, and yet have no reliſh for frivolous amuſements: thus many having more wealth than opportunities of expence, employ it in a fantaſtical manner: in this nation they have more judgment than taſte.

As they are always employed about their own intereſt, they have not that politeneſs which is founded on indolence; and they really have not leiſure to attain it.

The æra of Roman politeneſs, is the ſame as that of the eſtabliſhment of arbitrary power. An abſo-

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lute government produces indolence, and this gives birth to politeneſs.

The more people there are in a nation who require a circumſpect behaviour, and a care not to diſpleaſe, the more there is of politeneſs. But it is rather the politeneſs of morals, than that of manners, which ought to diſtinguiſh us from barbarous nations.

In a country where every man has, in ſome ſort, a ſhare in the adminiſtration of the government, the women ought ſcarcely to live with the men. They are therefore modeſt, that is, timid; and this timidity conſtitutes their virtue: whilſt the men, without a taſte for gallantry, plunge themſelves into a debauchery, which leaves them at leiſure, and in the enjoyment of their full liberty.

Their laws not being made for one individual more than another, each conſiders himſelf as a monarch; and, indeed, the men of this nation are rather confederates than fellow ſubjects.

As the climate has given many perſons a reſtleſs ſpirit and extended views, in a country where the conſtitution gives every man a ſhare in its government and political intereſts, converſation generally turns upon politics: and we ſee men ſpend their lives in the calculation of events, which, conſidering the nature of things and the caprices of fortune, or rather of men, can ſcarcely be thought ſubject to the rules of calculation.

In a free nation, it is very often a matter of indifference, whether individuals reaſon well or ill; it is ſufficient that they do reaſon: from hence ſprings that liberty which is a ſecurity from the effects of theſe reaſonings.

But

But in a deſpotic government, it is equally pernicious whether they reaſon well or ill; their reaſoning is alone ſufficient to ſhock the principle of that government.

Many people who have no deſire of pleaſing, abandon themſelves to their own particular humour; and moſt of thoſe who have wit and ingenuity are ingenious in tormenting themſelves: filled with a contempt or diſguſt for all things, they are unhappy amidſt all the bleſſings that can poſſibly contribute to promote their felicity.

As no ſubject fears another, the whole nation is proud; for the pride of kings is founded only on their independence.

Free nations are haughty; others may more properly be called vain.

But as theſe men, who are naturally ſo proud, live much by themſelves, they are commonly baſhful when they appear among ſtrangers; and we frequently ſee them behave for a conſiderable time with an odd mixture of pride and ill-placed ſhame.

The character of the nation is more particularly diſcovered in their literary performances, in which we find the men of thought and deep meditation.

As ſociety gives us a ſenſe of the ridicules of mankind, retirement renders us more fit to reflect on the folly of vice. Their ſatyrical writings are ſharp and ſevere, and we find amongſt them many Juvenals, without diſcovering one Horace.

In monarchies extremely abſolute, hiſtorians betray the truth, becauſe they are not at liberty to ſpeak it; in ſtates remarkably free, they betray the truth, becauſe of their liberty itſelf, which always produces diviſions, every one becoming as great

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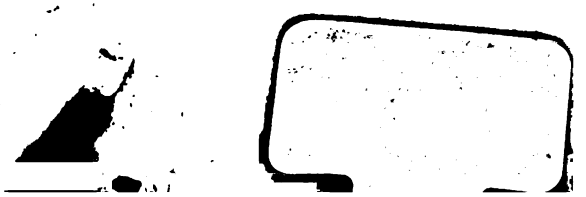
great a slave to the prejudices of his faction as he could be in a despotic state.

Their poets have more frequently an original rudeness of invention, than that particular kind of delicacy which springs from taste; we there find something which approaches nearer to the bold strength of a Michael Angelo, than to the softer graces of a Raphael.

End of the FIRST VOLUME.

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